IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 18TH DAY OF DECEMBER 2020 / 27TH AGRAHAYANA, 1942

<u>WP(C).No.22593 OF 2020(Y)</u>

<u>PETITIONER/S</u>:

>   ROYALE EDIBLE COMPANY,
>   ERAVATHOOR ROAD, ANNAMANADA P.O, IRINJALAKUDA,
>   THRISSUR DISTRICT - 680 741, REPRESENTED BY ITS
>   MANAGING PARTNER, E.N. GOPAKUMAR.
>
>   BY ADVS.
>   SRI.HARISANKAR V. MENON
>   SMT.MEERA V.MENON
>   SMT.K.KRISHNA

<u>RESPONDENT/S</u>:

>   1   THE STATE TAX OFFICER,
>   STATE GST DEPARTMENT, CHALAKUDY,
>   THRISSUR DISTRICT, PIN - 680 307.
>
>   2   THE ASSISTNAT COMMISSIONER OF STATE TAX,
>   SGST DEPARTMENT,IRINJALAKUDA, THRISSUR DISTRICT,
>   PIN - 680 121.
>
>   3   THE JOINT COMMISSIONER(APPEALS),
>   DEPT OF STATE GST, THEVARA, ERNAKULAM,
>   KOCHI - 682 015.
>
>   4   THE COMMISSIONER OF STATE GST
>   STATE GST DEPARTMENT, TAX TOWERS,
>   KILLIPPALAM, KARAMANA,
>   THIRUVANANTHAPURAM - 695 002.
>
>   R2 BY GOVERNMENT PLEADER SMT.THUSHARA JAMES.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
18.12.2020, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

JUDGMENT

Dated this the 18th day of December 2020

The petitioner is stated to be a partnership firm engaged in running an industrial unit, manufacturing coconut oil from copra. It is the case of the petitioner that a considerable quantity of the sales effected by it is to SUPPLYCO and FACT, who deduct tax at the rate of 2% on payments made to the petitioner in terms of Section 51 of the GST Act. As part of the procedural compliance required under the GST Act, the petitioner is obliged to maintain two electronic ledgers with the department viz. the Electronic Cash Ledger and the Electronic Credit Ledger. The details of the said ledgers are as provided under Section 49 of the CGST Act. Into the Cash Ledger, is credited every deposit made towards tax, interest, penalty, fee or any other amount payable under the Act, and into the Electronic Credit Ledger is credited the Input Tax Credit available to the petitioner based on a self assessment done by him. Section 49 also stipulates the manner in which the amounts available in the Electronic Cash Ledger and the Electronic Credit Ledger of the petitioner may be used for payment of output tax and other amounts under the GST Act.

2.   In the writ petition, it is the case of the petitioner that the deduction of tax effected by SUPPLYCO and FACT had the result of

enhancing the amount in the Electronic Cash Ledger maintained by the petitioner since the deducted amounts of tax were credited into the Electronic Cash Ledger in which there was already a substantial amount, in excess of the known liabilities of the petitioner under the Act. It is stated that as on 30.04.2019, there was an excess of Rs.93,38,884/- available in the Electronic Cash Ledger of the petitioner. Seeing that such excess amount did not have to be maintained in the Electronic Cash Ledger, more so when there was no known liability of the petitioner towards tax, penalty, interest or other amounts under the Act, the petitioner approached the 1st respondent through Ext.P2 application, which was later bifurcated to Ext.P3(a) and P3(b) applications to cover separate periods. The said applications preferred before the 1st respondent were later transmitted to the 2nd respondent for adjudication, and the latter, by Ext.P4 order, rejected the claim for refund preferred by the petitioner citing Section 51 of the CGST Act and pointing out that, inasmuch as there was no excess deduction or erroneous deduction made by the deductor of tax in the instant case, the refund claimed by the petitioner could not be processed in terms of Section 54 of the Act. Although the petitioner preferred an appeal before the 3rd respondent against Ext.P4 order of the 2nd respondent, the petitioner has approached this Court through the present writ petition challenging Ext.P4 order, inter alia on the ground that the 2nd

respondent completely misread the provisions of the Act while rejecting the application for refund preferred by the petitioner.

3.   A statement has been filed on behalf of the 2nd respondent, wherein the sequence of events leading to the passing of Ext.P4 order have been narrated. In justification of Ext.P4 order, it is contended that the order passed is in accordance with the provisions of Sections 51 and 54 of the CGST Act. It is reiterated that under Section 51(8) of the Act, refund in respect of TDS to the deductor or the deductee arising on account of the excess or erroneous deduction is to be dealt with in accordance with the provisions of Section 54 and since in the instant case, the refund claimed is neither in the category of excess deduction nor in the category of erroneous deduction, the provisions of Section 54 would not apply.

4.   I have heard Sri.Harisankar V. Menon, learned counsel for the petitioner and Dr.Thushara James, learned Government Pleader for the respondents.

5.   On a consideration of the facts and circumstances of the case and the submissions made across the Bar, I find from a perusal of Ext.P4 order that is impugned in the writ petition that the 2nd respondent has completely misunderstood the nature of the claim made by the petitioner as also the scope and ambit of Sections 51 and 54 of the CGST Act. In the instant case, as is evident from the facts

stated in the writ petition as also from a perusal of the claim for refund preferred by the 2nd respondent, what the petitioner was essentially claiming was the refund of <u>the balance remaining in the Electronic Cash Ledger,</u> that was maintained in accordance with the provisions of the Act. Section 54(1) deals with <u>claims for refund of any tax and interest or other amount</u> paid by the assessee, and the proviso to Section 54(1) deals with <u>claim for refund of any balance in the Electronic Cash Ledger</u>. The latter claim has to be read in the backdrop of the provisions of Section 49(6) of the Act, which clearly provides that the balance in the Electronic Cash Ledger or Electronic Credit Ledger <u>after payment of tax, interest, penalty, fee or any other amount payable under the Act or the Rules made thereunder</u>, may be refunded in accordance with the provisions of Section 54. What appears from the scheme of the aforesaid two provisions is that, whenever there are amounts credited into the Electronic Cash Ledger in accordance with the provisions of the Act, and a situation arises where, after the payment of tax, interest, penalty, fee or other amounts payable by an assessee, there remains a balance in the Electronic Cash Ledger, it is open to the assessee to claim a refund of that balance under the first proviso to Section 54 of the Act. In the instant case, it is not in dispute that during the period for which the refund was claimed by the petitioner assessee, there was no outstanding liability towards tax, interest, penalty or any other

amount under the Act, and there were excess amounts in the Electronic Cash Ledger of the petitioner-assessee that could be considered for refund to him in terms of the first Proviso to Section 54 of the Act. The 2nd respondent, however, misdirected himself and treated the claim for refund preferred by the petitioner as one relating to Section 51(8) of the Act. It has to be noted that at no stage did the petitioner have a case that the deduction of tax at source by SUPPLYCO/FACT was excessive or erroneous. That being the case, there was no occasion for the 2nd respondent to have considered the application as one traceable to Section 51(8) of the Act. The only exercise that had to be done by the 2nd respondent was to ascertain whether there was a balance in the Electronic Cash Ledger, after meeting the known liabilities of the petitioner towards tax, interest or any other amount under the Act, and if there was such a balance, the refund had necessarily to be granted to the petitioner. I am, therefore, of the view that Ext.P4 order of the 2nd respondent cannot be legally sustained. The said order is, therefore, quashed and the 2nd respondent is directed to ascertain the excess amount lying to the credit of the petitioner in his Electronic Cash Ledger after making provision for any known and determined liability of the petitioner towards tax, interest, penalty or other amounts under the Act. The 2nd respondent shall thereafter refund the said excess amount to the petitioner within three weeks from the date of receipt of this

judgment.

Sd/-

A.K.JAYASANKARAN NAMBIAR

JUDGE

DG

APPENDIX OF WP(C) 22593/2020

PETITIONER'S/S EXHIBITS:

EXHIBIT P1	COPY OF TDS CERTIFICATE NO.TD/112018/879047 ISSUED BY SUPPLYCO.
EXHIBIT P1(a)	COPY OF TDS CERTIFICATE NO.TD/122018/789727 ISSUED BY SUPPLYCO.
EXHIBIT P1(b)	COPY OF TDS CERTIFICATE NO.TD/012019/879053 ISSUED BY SUPPLYCO.
EXHIBIT P1(c)	COPY OF TDS CERTIFICATE NO.TD/022019/879082 ISSUED BY SUPPLYCO.
EXHIBIT P1(d)	COPY OF TDS CERTIFICATE NO.TD/032019/879070 ISSUED BY SUPPLYCO.
EXHIBIT P1(e)	COPY OF TDS CERTIFICATE NO.TD/102018/879003 ISSUED BY FACT.
EXHIBIT P1(f)	COPY OF TDS CERTIFICATE NO.TD/112018/879048 ISSUED BY FACT.
EXHIBIT P1(g)	COPY OF TDS CERTIFICATE NO.TD/122018/789728 ISSUED BY FACT.
EXHIBIT P1(h)	COPY OF TDS CERTIFICATE NO.TD/012019/879054 ISSUED BY FACT.
EXHIBIT P1(i)	COPY OF TDS CERTIFICATE NO.TD/022019/879083 ISSUED BY FACT.
EXHIBIT P2	COPY OF REFUND APPLICATION IN GST RFD -01A FILED BY THE PETITIONER.
EXHIBIT P2(a)	COPY OF COVERING LETTER SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.
EXHIBIT P2(b)	COPY OF INDEX OF THE DOCUMENTS SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.
EXHIBIT P3	COPY OF DEFICIENCY MEMO ISSUED BY THE

2ND RESPONDENT.

EXHIBIT P3(a)   **COPY OF FRESH REFUND APPLICATION FILED BY THE PETITIONER.**

EXHIBIT P3(b)   **COPY OF FRESH REFUND APPLICATION FILED BY THE PETITIONER.**

EXHIBIT P3(c)   **COPY OF APPLICATION FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.**

EXHIBIT P4   **COPY OF ORDER ISSUED BY THE 2ND RESPONDENT.**

EXHIBIT P5   **COPY OF CIRCULAR NO. 24/24/2017-GST ISSUED BY THE COMMISSIONER (GST), GOVERNMENT OF INDIA, NEW DELHI.**

EXHIBIT P6   **COPY OF APPLICATION FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.**

EXHIBIT P7   **COPY OF APPEAL FILED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.**