2026:KER:62583

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE JOHNSON JOHN

THURSDAY, THE 20TH DAY OF AUGUST 2026 / 29TH SRAVANA, 1948

WP(C) NO. 12964 OF 2019

PETITIONER:-

M/S.AVT MCCORMICK INGREDIENTS PVT.LTD., PLOT NO.225/1, A 5-7 KAIPOORIKKARA, VAZHAKULAM, MARAMPILLY P.O., ALUVA, ERNAKULAM - 683 105, REPRESENTED BY ITS VICE PRESIDENT MR. V.ANANTHARAMAN.

BY ADVS.
SHRI.A.KUMAR (SR.)
SHRI.P.J.ANILKUMAR
SMTG.MINI(1748)
SHRI.P.S.SREE PRASAD
SHRI.AJAY V.ANAND

RESPONDENTS:

1. UNION OF INDIA, REPRESENTED BY FINANCE SECRETARY, NORTH BLOCK, NEW DELHI - 110 001.

2. THE COMMISSIONER GST AND CENTRAL EXCISE, CENTRAL REVENUE BUILDING, I S PRESS RD., COCHIN 682 018.

3. THE COMMISSIONER OF CENTRAL TAX AND CENTRAL EXCISE, COCHIN COMMISSIONERATE (REVIEW CELL), I.S.PRESS ROAD, COCHIN - 682 018.

4. ASSISTANT COMMISSIONER OF CENTRAL TAX AND CENTRAL EXCISE, ALUVA DIVISION, VATHIATTU TOWERS, THOTTAKATTUKARA, ALUVA - 683 101.

5. SUPERINTENDENT OF CENTRAL TAX AND CENTRAL EXCISE, ALUVA RANGE, ALUVA - 683 101.

BY ADVS.
SHRI.P.VIJAYAKUMAR, ASG OF INDIA
R1 TO R5 BY SRI.P.R.SREEJITH, SC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07.08.2026, THE COURT ON 20.08.2026 DELIVERED THE FOLLOWING:

2026:KER:62583

'CR'

JOHNSON JOHN, J.

W.P.(C) No. 12964 of 2019

Dated this the 20th day of August, 2026

J U D G M E N T

The petitioner, a Private Limited Company, filed this writ petition challenging Exhibit P6 assessment order of the Assistant Commissioner dated 15.10.2018 to the extent of disallowing refund of input tax credit lying in the Electronic Credit Ledger of the petitioner under the head 'SGST credit'.

2. The petitioner company is engaged in the export of various spice extracts and Oleoresins and was registered under the erstwhile Kerala Value Added Tax Act, 2003. The petitioner obtained GSTIN registration and filed GST TRAN-1 form for transitioning the excess input tax credit lying in its VAT ledger onto the Electronic Credit Ledger of the petitioner. It is stated that the TRAN-1 form was filed in November, 2017 and the same was credited to Electronic Credit Ledger on 27.12.2017.

3. Thereafter, when the petitioner sought refund of input tax credit for the month of November, 2017, the assessing authority issued show cause notice proposing to reject the refund application and against the show cause notice, the petitioner filed a detailed reply. However, without appreciating the contentions of the petitioner, the 4th respondent assessing authority, rejected the claim for refund of input tax credit.

4. In the counter affidavit filed by respondents 1 to 5, it is stated that the refund claim of the petitioner was rejected for the reason that transitional credit is not a credit earned during the relevant period and does not qualify as 'Net ITC' in terms with Rule 89(4) of the Central Goods and Services Tax Rules, 2017 ('CGST Rules' for short) as clarified by Exhibit P7 Circular No.37/11/2018-GST dated 15.3.2018. It is also contended that the writ petition was filed without exhausting the statutory remedies and after the expiry of the period of limitation for filing appeal and therefore, this belated writ petition cannot be entertained.

5. Heard Sri. A. Kumar, learned Senior counsel for the writ

petitioner and Sri. P.R. Sreejith, the learned Standing Counsel for respondents 1 to 5.

6. The learned counsel for the writ petitioner argued that the adjudicating authority passed Exhibit P6 order based on a circular issued by the Department and the same is also binding on the appellate authority and therefore, it would be a mere exercise in futility for the petitioner to urge the same contentions before the appellate authority and only this Court can consider whether the circular is against the statutory provisions and Rules and also cited the decision of the Honourable Supreme Court in ***Filterco and another v. Commissioner of Sales Tax, Madhya Pradesh and another*** [(1986) 2 SCC 103 = 1986(2) TMI 58- Supreme Court].

7. The learned counsel for the petitioner cited the decision of the Gujarat High Court in ***M/s Ford India Pvt. Ltd. v. Union of India and others*** [2024 (12) TMI 570] to point out that the authorities cannot disallow refund by ignoring transitional credit in the Electronic Credit Ledger. The learned counsel for the petitioner also cited the decision of

the Gujarat High court in ***M/s. Intas Pharmaceuticals Ltd. v. Union of India and Others*** [2024 (1) TMI 1398 = (2024) 131 GSTR 1] and the decision of the Allahabad High Court in ***Moriroku UT India Pvt. Ltd. v. State of U.P*** [2007 (4) TMI 609] in support of the contention that the unutilised input tax credit in erstwhile regime as on 30.06.2017 shall be available as opening balance in the Electronic Credit Ledger as on 01.07.2017.

8. *Per contra*, the learned counsel for the respondents cited the decision of the Honourable Supreme Court in ***Singh Enterprises v. Commissioner OF C. Ex., Jamshedpur*** [2008 (221) E.L.T 163 (S.C) to point out that the appellate authority has no power to allow appeal presented beyond the period of limitation and also the decision of a Division Bench of this Court in ***Assistant Commissioner of Central Excise v. Krishna Poduval*** [2006(1) S.T.R. 185 (Ker.) to point out that the jurisdiction of the High Court under Article 226 of the Constitution of India is not so wide as to resurrect a cause of action which has become unenforceable on account of law of limitation.

9. In paragraph 3 of Exhibit P6 assessment order, it is stated as follows:

> "On scrutiny of the refund claim, it is seen that that the Net Input Tax under the head SGST in Form GST RFD-O1A is taken as Rs.78,29,523/- whereas as per GSTR-3B for the month of November 2017 and the statement submitted, the Input tax for SGST amounts to Rs.29,84,970/-. Upon verification with the Electronic Credit Ledger, it is understood that the amount of SGST Input tax carried forward under Transitional Provisions of CGST Act, 2017, i.e. Rs.49,54,739/- is also included in the Net Input Tax for the month of November, 2017 while filing refund claim but the said amount was credited into the electronic credit ledger on 27-12-2017 which is not pertaining to the relevant tax period as per Rule 89(4) of the CGST Rules, 2017."

10. Section 140 of the Central Goods and Services Tax Act, 2017 ('CGST Act' for short) provides for transitional arrangements for input tax credit. As per Rule 117 of the CGST Rules, if a registered person has to claim transitional credit under Section 140 of the CGST Act, a declaration in Form GST TRAN-1 is required to be filed within ninety days of the appointed day i.e., on or before 28.09.2017. As per the above said provisions, the transitional credit, closing balance of credit of taxes lying and shown in last return filed by the assessee prior to introduction of CGST i.e., as on 30.06.2017 will be carried forward as credit in

Electronic Credit ledger as on 01.07.2017. Therefore, the credit balance of the unutilised input tax in erstwhile regime as on 30.06.2017 shall be available as opening balance of unutilised input tax credit as on 01.07.2017.

11. In the present case, the petitioner has not produced a copy of the declaration in Form GST TRAN-1 as required to be filed within nintey days of the appointed day. The petitioner has not produced any satisfactory material to prove his credit in the Electronic Credit Ledger as on 01.07.2017. The adjudicating authority can allow the refund only if it is proved that the amount claimed was credited into the Electronic Credit Ledger as on 01.07.2017 and in the absence of satisfactory material to prove the same, I find no reason to interfere with the impugned order of the adjudicating authority.

12. Admittedly, the present writ petition was filed after the expiry of the statutory period prescribed for filing an appeal. Sections 107 and 108 of the CGST Act shows that there is provision for filing appeal and revision against the order passed by the adjudicating authority. The

decision of the Honourable Supreme Court in ***Moriroku UT India (P) Ltd. v. State of U.P and Ors.*** [(2008) 4 SCC 548] shows that the decision of the Allahabad High Court in ***MORIROKU UT INDIA PVT. LTD.*** (cited supra) was set aside by the Honourable Supreme Court.

13. As noticed earlier, the present writ petition was filed after the expiry of the period of limitation for filing the statutory appeal. In ***A. V. Venkateswaran, Collector of Customs, Bombay v. Ramchand Sobhraj Wadhwani and another*** [AIR 1961 SC 1506 = 1961 KLT OnLine 1276 (SC)], the Hon'ble Supreme Court held thus:

> "11. ...we must express our dissent from the reasoning by which the learned Judges of the High Court held that the writ petitioner was absolved from the normal obligation to exhaust his statutory remedies before invoking the jurisdiction of the High Court under Art. 226 of the Constitution. If a petitioner has disabled himself from availing himself of the statutory remedy by his own fault in not doing so within the prescribed time, he cannot certainly be permitted to urge that as a ground for the Court dealing with his petition under Art. 226 to exercise its discretion in his favour. Indeed, the second passage extracted from the Judgment of the learned C. J. in Mohammad Nooh's case 1958 SCR 595 at pp. 605-607 : (AIR 1958 SC 86 at p. 93) with its reference to the right to appeal being lost "through no fault of his own" emphasizes this aspect of the rule."

14. In ***Rikhab Chand Jain v. Union of India*** [2025 (6) KLT 562 (SC)], the Honourable Supreme Court held that if a petitioner has

disabled himself from availing a statutory remedy, the discretionary remedy under Article 226 of the Constitution of India cannot be exercised in his favour. In the said decision, it was also held as follows in paragraph 13:

> "**13**. Although there is no period of limitation for invoking the writ jurisdiction of a High Court under Article 226, all that the courts insist is invocation of its jurisdiction with utmost expedition and, at any rate, within a "reasonable period". What would constitute "reasonable period" cannot be put in a straight-jacket, and it must invariably depend on the facts and circumstances of each particular case. Nonetheless, the period of limitation prescribed by an enactment for availing the alternative remedy provided thereunder in certain cases does provide indication as to what should be the "reasonable period" within which the writ jurisdiction has to be invoked."

15. The jurisdiction of the High Court under Article 226 of the Constitution of India is not so wide as to resurrect a cause of action which has become unenforceable on account of law of limitation. In ***Lt Col K. C. Chandra Bhanu v. Union of India*** [2026 KHC OnLine 572], a Division Bench of this Court held that when the issue is finally decided by a competent forum and attained finality, the maxim '*interest reipublicae ut sit finis litiu*m' would apply. The Honourable Supreme Court in ***Assistant Commissioner (CT) LTU v. Glaxo Smith Kline***

Consumer Health Care Ltd. (2020 (3) KLT OnLIne 1120 (SC), held as follows in para 15:

> "15. We may now revert to the Full Bench decision of the Andhra Pradesh High Court in Electronics Corporation of India Ltd. (supra), which had adopted the view taken by the Full Bench of the Gujarat High Court in Panoli Intermediate (India) Pvt. Ltd. v. Union of India & Ors. (2015 (3) KLT SN 30 (C.No.40) Guj. = AIR 2015 Guj. 97) and also of the Karnataka High Court in Phoenix Plasts Company v. Commissioner of Central Excise (AppealI), Bangalore (2013 (298) ELT 481 (Kar.)). The logic applied in these decisions proceeds on fallacious premise. For, these decisions are premised on the logic that provision such as Section 31 of the 1995 Act, cannot curtail the jurisdiction of the High Court under Articles 226 and 227 of the Constitution. This approach is faulty. It is not a matter of taking away the jurisdiction of the High Court. In a given case, the assessee may approach the High Court before the statutory period of appeal expires to challenge the assessment order by way of writ petition on the ground that the same is without jurisdiction or passed in excess of jurisdiction by overstepping or crossing the limits of jurisdiction including in flagrant disregard of law and rules of procedure or in violation of principles of natural justice, where no procedure is specified. The High Court may accede to such a challenge and can also nonsuit the petitioner on the ground that alternative efficacious remedy is available and that be invoked by the writ petitioner. However, if the writ petitioner choses to approach the High Court after expiry of the maximum limitation period of 60 days prescribed under Section 31 of the 2005 Act, the High Court cannot disregard the statutory period for redressal of the grievance and entertain the writ petition of such a party as a matter of course. Doing so would be in the teeth of the principle underlying the dictum of a threeJudge Bench of this Court in Oil and Natural Gas Corporation Limited (supra). In other words, the fact that the High Court has wide powers, does not mean that it would issue a writ which may be inconsistent with the legislative intent regarding the dispensation explicitly prescribed under Section 31 of the 2005 Act. That would render the legislative scheme and intention behind the stated provision otiose."

16. It is the specific case of the respondents that the petitioner

cannot reagitate an issue finally decided by a competent forum and attained finality, by filing an inordinately belated writ petition. I find that the discretionary jurisdiction under Article 226 of the Constitution of India cannot be exercised to resurrect a cause of action which has become unenforceable on account of law of limitation. I have no doubt that entertaining such a belated writ petition would be contrary to public policy that it is for the public good that there be an end to litigation. Therefore, I find that the writ petition is devoid of merit and is liable to be dismissed.

In the result, the writ petition is dismissed.

sd/-

JOHNSON JOHN,
JUDGE.

Rv

APPENDIX OF WP(C) NO. 12964 OF 2019

PETITIONER'S EXHIBITS:

EXHIBIT P1	TRUE COPY OF MONTHLY VAT RETURN FOR THE PERIOD JUNE 2017 DATED 25/07/2017.
EXHIBIT P2	TRUE COPY OF ELECTRONIC CREDIT LEDGER FOR PERIOD DECEMBER 01/11/2017 TO 31/01/2018.
EXHIBIT P3	TRUE COPY OF REFUND APPLICATION BEARING APPLICATION REFERENCE NUMBER (ARN) 321117338364E DATED 13/03/2018.
EXHIBIT P4	TRUE COPY OF SHOW-CAUSE NOTICE BEARING NO.10/2018-GST DATED 28/08/2018.
EXHIBIT P5	TRUE COPY OF THE REPLY DATED 01/10/2018.
EXHIBIT P6	TRUE COPY OF THE ORDER-IN-ORIGINAL BEARING NO.10/2018-GST DATED 15/10/2018.
EXHIBIT P7	TRUE COPY OF THE CIRCULAR BEARING NO.37/11/2018 DATED 15/03/2018.
EXHIBIT P8	TRUE COPY OF THE CIRCULAR BEARING NO.79/53/2018 DATED 31/12/2018.

RESPONDENT ANNEXURES : NIL

/True Copy/

P.S to Judge.

Rv