CNR : KLHC010638972026

2026:KER:66293

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

&

THE HONOURABLE MR.JUSTICE BASANT BALAJI

MONDAY, THE 31ST DAY OF AUGUST 2026 / 9TH BHADRA, 1948

WA NO. 1659 OF 2026

AGAINST THE JUDGMENT DATED 30.07.2026 IN WP(C) NO.25995 OF 2026 OF HIGH COURT OF KERALA

APPELLANT:

**NUTECH CONSTRUCTIONS,
4TH FLOOR, 34/39Y, IV-C, MALABAR GATE APARTMENTS, EDAPPALLY, ERNAKULAM. (REPRESENTED BY ITS MANAGING PARTNER SRI. ANIL PAVUNNY ELIAS), PIN - 682024**

**BY ADVS.
SHRI.K.N.SREEKUMARAN
SRI.N.R.SAJ
SHRI.LIJO VARGHESE**

RESPONDENTS:

1 **ASSISTANT COMMISSIONER,
CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS, CENTRAL TAX & CENTRAL EXCISE, KAKKANAD DIVISION, GST BHAWAN, KATHRIKKADAVU, ERNAKULAM., PIN - 682017**

2 **COMMISSIONER,
CENTRAL TAX & CENTRAL EXCISE, I.S. PRESS ROAD,**

KOCHI, ERNAKULAM, PIN - 682017

3 SUPERINTENDENT OF CENTRAL TAX & CENTRAL EXCISE ASSESSMENT & ADJUDICATION VERTICAL (RANGE-3) AND ARREAR VERTICAL, KAKKANAD DIVISION, KOCHI, PIN - 682017

BY ADV SHRI.P.R.SREEJITH, ADDITIONAL STANDING COUNSEL, CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS (ERSTWHILE CENTRAL BOARD OF EXCISE AND CUSTOMS)

OTHER PRESENT:

SC SRI. P.R SREEJITH

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 31.08.2026, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Devan Ramachandran,J

Sri. K.N. Sreekumaran - learned counsel for the appellant, asserts that his client's contentions in this case are strongly underpinned declarations of the Hon'ble Supreme Court in ***M/s. Tata Steel Limited v. Union of India, through the Secretary, Ministry of Finance and Others*** [2026 (8) TMI 1587].

2. According to the learned counsel, Ext.P3 is vitiated because the statements therein have been made by the Assistant Commissioner without verifying the accounts, and as a mere formality. He contented that, as evident from ***Tata Steel Limited*** (supra), the foundational facts, to invoke the rigor of Section 74 of the Goods and Services Tax Act (‘GST Act’) ought to have been first recorded; especially since this gives an undue advantage to the Department to claim an extended period of limitation, which otherwise is not available to them under Section 73 of the said Act. He argued that the learned Single Judge, however, mistook the case to be one where his client has an alternate remedy; to thus dismiss the

writ petition; and prayed that, consequently, it be set aside and that his client be granted the reliefs as sought for.

3. Sri. P.R. Sreejith, the learned Senior Panel Counsel appearing for the respondents, submitted that, even accepting the arguments of Sri. K.N. Sreekumaran, Ext.P3 cannot be found in error because, the only requirement, as per the declarations in ***Tata Steel Limited*** (supra), is that the foundational facts ought to be looked into and found attracted. He showed us that Ext.P3 - in paragraphs 17, 18, 19, 20, 21 and 24 thereof - records the facts as are necessary for sustaining an action under Section 74 of the 'GST Act'; and further that, if the appellant has a case that they are incorrect or wrong, then it is for them to invoke their alternate remedy, the liberty for which has already been reserved to them by the learned Single Judge. He prayed that this appeal be hence, dismissed.

4. We find force in the afore submissions of Sri. P.R. Sreejith because, as correctly pointed out by him, in Ext.P3 - in the paragraphs mentioned above - the Authority has recorded the reasons why he finds Section 74 of the 'GST

Act' to be attracted. It inter alia, records that the appellant-assessee had availed input tax credit (ITC) far in excess of what is reflected in GSTR-2A, and had not disclosed the basis of such availment, nor responded to the audit communications. Several other reasons have also been alluded to, with the Authority finally concluding that 'this clearly constitutes suppression of material facts' (sic).

5. As rightly found by the learned Single Judge, the statements in Ext.P3 are seen edificed on factual factors, into which, this Court cannot enter on its merits, while acting under Article 226 of the Constitution of India.

6. We are, therefore, also of the firm view that the appellant must invoke their appellate remedy against Ext.P3, since all contentions - including those recorded above, as also the plea made by the learned counsel before us that the matter be relegated to the Assessing Authority for fresh consideration – can be effectively assessed and answered.

7. At this time, Sri. K.N. Sreekumaran intervened and submitted that there is an additional reason why his client is approaching this Court, namely that, if they

are to invoke the alternate statutory remedy, they will have to remit 10% of the demanded tax, which, according to him, they are not liable to pay. We are afraid that this argument can never find favour in law; and it has been well established through a catena of judgments that, merely because there is a condition attached for availing the alternate statutory remedy, the assessee cannot be allowed to approach this Court, solely to avoid the same.

In such circumstances, we find no reason to intervene; and consequently dismiss this appeal.

Sd/-
DEVAN RAMACHANDRAN
JUDGE

Sd/-
BASANT BALAJI
JUDGE

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