



2025:KER:6568

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

TUESDAY, THE 28<sup>TH</sup> DAY OF JANUARY 2025 / 8TH MAGHA, 1946

WP(C) NO. 28575 OF 2023

**PETITIONER :**

JVS ENGINEERING WORKS  
18/1366D,  
NEAR PULIMUTTU BRIDGE,  
PALLURUTHY, KOCHI,  
PIN - 682 006.  
REPRESENTED BY ITS PROPRIETOR SRI. K.J JOY,

BY ADVS.  
AJI V.DEV  
ALAN PRIYADARSHI DEV  
S.SAJEEVAN

**RESPONDENTS:**

- 1 THE ASSISTANT STATE TAX OFFICER  
TAX PAYER SERVICES CIRCLE,  
STATE G.S.T. DEPARTMENT,  
KOCHI AT MATTANCHERRY, PIN - 682 002.
- 2 THE COMMISSIONER OF STATE TAX,  
THE STATE G.S.T DEPARTMENT,  
TAX TOWER,  
KARAMANA P.O.,  
THIRUVANANTHAPURAM, PIN - 673 006.
- 3 STATE OF KERALA  
REPRESENTED BY ITS SECRETARY,  
FINANCE DEPARTMENT,  
SECRETARIAT,  
THIRUVANANTHAPURAM, PIN - 695 001.



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- 4 THE UNION OF INDIA  
THROUGH ITS SECRETARY (REVENUE),  
MINISTRY OF FINANCE,  
DEPARTMENT OF REVENUE,  
GOVERNMENT OF INDIA, NORTH BLOCK,  
NEW DELHI G.P.O., PIN - 110 001.
- 5 THE GST COUNCIL THROUGH ITS CHAIRPERSON,  
DEPARTMENT OF FINANCE, NORTH BLOCK,  
DELHI G.P.O., PIN - 110 001.
- 6 THE GOODS AND SERVICES TAX NETWORK  
EAST WING 4TH FLOOR, WORLD MARK - I AERO CITY,  
NEW DELHI  
REPRESENTED BY ITS - CHAIRMAN,, PIN - 110 037.

SRI.P.R.SREEJITH, SC  
GP JASMIN M.M

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
28.01.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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**BECHU KURIAN THOMAS, J.****W.P.(C) No.28575 of 2023****Dated this the 28<sup>th</sup> day of January, 2025****JUDGMENT**

Petitioner is a registered tax payer under the Central Goods & Services Tax Act, 2017 & Kerala State Goods & Services Tax Act, 2017. For the period 2017-2018, by proceedings dated 04.07.2023, the first respondent determined tax, interest and penalty due from the petitioner alleging that he had wrongly availed the input tax credit eligible in IGST, under the heads CGST and SGST. An amount of Rs.74,094/- has been determined in Ext.P3 order, to be the tax, interest and penalty due from the petitioner. The aforesaid order is under challenge in this proceeding under Article 226 of the Constitution of India.

2. The limited contention now raised by the petitioner is that the alleged wrong availment is not illegal as it is justifiable as declared in the decision in **Rejimon Padickapparambil Alex v. Union of India and others** 2024 KHC Online 7215.
3. I have heard Sri.Aji V. Dev, the learned counsel for the petitioner as well as Sri.P.R.Sreejith, the learned Government Pleader.
4. In the decision in **Rejimon Padickapparambil Alex v. Union of India and others** 2024 KHC Online 7215 a Division Bench of this Court had observed that there can be no wrong availing of input tax credit when such credit, available in IGST, was claimed under the heads CGST and



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SGST. It was also observed that the electronic credit ledger is in the nature of a wallet with different compartments of Integrated Goods and Services Tax, Central Goods and Services Tax and State Goods and Services Tax and there cannot be any wrong availing of Input Tax Credit merely because a taxpayer had taken the benefit of credit of input tax available in one compartment under the other.

5. In the instant case, petitioner is alleged to have availed the eligible input tax credit under the IGST through the heads CGST and SGST. In view of *Rejimon' case (supra)* the said availing of credit of input tax cannot be said to be illegal. Since the aforesaid proposition of law, as declared by this Court, was not considered by the first respondent while determining the liability as per Ext.P3, I am of the view that the said order is liable to be set aside and a reconsideration be directed.
6. Accordingly, Ext.P3 is set aside and the first respondent is directed to reconsider the matter, bearing in mind the observations of this Court in ***Rejimon Padickapparambil Alex's*** case (supra), as expeditiously as possible, at any rate within a period of three months from the date of receipt of a certified copy of this judgment.

The writ petition is allowed.

sd/-  
**BECHU KURIAN THOMAS**  
**JUDGE**

AMV/28/01/2025



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**APPENDIX OF WP(C) 28575/2023****PETITIONER EXHIBITS**

<b>EXHIBIT P1</b>	<b>TRUE COPY OF THE SHOW CAUSE NOTICE ISSUED U/S. 73 OF THE GST ACTS PERTAINING TO THE YEAR 2017-18 DATED: 19.07.2022</b>
<b>EXHIBIT P2</b>	<b>TRUE COPY OF THE REPLY FILED AGAINST THE SCN BY THE PETITIONER DATED: 27.07.2022</b>
<b>EXHIBIT P3</b>	<b>TRUE COPY OF THE ORDER OF ASSESSMENT PASSED FOR THE YEAR 2017-18 DATED: 04.07.2023</b>
<b>EXHIBIT P3(A)</b>	<b>TRUE COPY OF THE SUMMERY OF ORDER PASSED/ISSUED FOR THE YEAR 2017-18 DATED: 04.07.2023</b>
<b>EXHIBIT P4</b>	<b>TRUE COPY OF THE REFUND ARN RECEIPT RECEIVED FROM THE PORTAL AGAINST REFUND APPLICATION FILED IN GST RFD-01 FOR THE MONTH OF JULY,2017 (FOR ₹5,046.00) DATED: 21.08.2023</b>
<b>EXHIBIT P4(A)</b>	<b>TRUE COPY OF THE REFUND ARN RECEIPT RECEIVED FROM THE PORTAL AGAINST REFUND APPLICATION FILED IN GST RFD-01 FOR THE MONTH OF MARCH,2018 (FOR ₹19,197.00) DATED: 21.08.2023</b>
<b>EXHIBIT P5</b>	<b>TRUE COPY OF THE JUDGMENT IN GRACE TRADING COMPANY VS. UNION OF INDIA &amp; ORS IN WPC NO. 2411 OF 2023 DATED: 30. 01.2023</b>