

(2024) 04 KL CK 0099

High Court Of Kerala

Case No: Writ Petition (C) Nos. 30644, 32069, 38545, 38547, 38891, 39203, 40762 Of 2023

Anishia Chandrakanth

APPELLANT

Vs

Superintendent, Central Tax &
Central Excise, Audit Circle 1

RESPONDENT

Date of Decision: April 9, 2024

Acts Referred:

- Central Goods and Services Tax Act, 2017 - Section 44(1), 44(2), 47, 47(1), 47(2)

Hon'ble Judges: Dinesh Kumar Singh, J

Bench: Single Bench

Advocate: Harisankar V. Menon, Meera V. Menon, R. Sreejith, K. Krishna, Parvathy Menon, Sreelal N Warriar

Final Decision: Allowed

Judgement

Dinesh Kumar Singh, J

1. In the present batch of petitions, common questions of fact and law are involved. Therefore, the same have been heard together and disposed of with common judgment.

The relevant facts of one of the writ petitions i.e., (W.P (C) No. 30644 of 2023) are extracted hereunder which are almost similar to other writ petitions except for a few dates and figures.

"The petitioner is an assessee under the provisions of the CGST/SGST Acts and has been filing proper returns under the Act. However the petitioner had filed the annual return in FORM GSTR -9 for FYs 2017-18, 2018-19 and 2019 -20 belatedly. In any event, the petitioner has paid the late fee for belated filing of the annual returns for the said years under Section 47(2). But the respondent has demanded late fee and created huge

demand by adopting the date of filing reconciliation statement in FORM GSTR-9C as the date of filing return by Ext. P4 order. Now the Central Government has introduced an amnesty scheme by Ext. P5 notification which is to be construed beneficial to the petitioner.”

2.The petitioner is a proprietorship concern dealer under the CGST / SGST Act, 2017 and Rules made thereunder. The petitioner is engaged in trading of paint, cement, aluminum sheets and hardware etc. The petitioner has been filing his proper returns and paying the tax dues thereon. However, the petitioner did not file his returns within the prescribed time limit under the Statute. As per Section 44(1) r/w Rule 80 of the CGST / SGST Act, the annual return Form GSTR-9 is to be filed before 31st December following the end of such financial year.

3.The Government realising the difficulties in initial stage of implementation of GST regime particularly Rule 80 of the GST Rules, 2017, and prevailing of Covid -19 pandemic, extended the last date to file the returns for the financial years 2017-2018, 2018-2019 and 2019-2020 by the notification No.6/2020-CT dated 03.02.2020, 80/2020-CT dated 28.10.2020 and 4/2021-CT dated 28.02.2021 respectively.

4. The petitioner has paid tax due and interest for filing the returns along with the prescribed late fee under Section 47 of the CGST / SGST Act. The following chart would show the due date and filing of the return in FORM GSTR-9 and filing of reconciliation statement in FORM GSTR-9C.

Return period	Due Date	Actual Filing date of return in FORM GSTR-9	

5. The petitioner has been issued with a show cause notice dated 29.03.2023, for calculating the number of days of delay in filing annual returns. The respondent had proposed to demand late fee of Rs. 2,93,600/- under Section 47(1) of the CGST / SGST Act, after adjusting the late fee of Rs. 57,600/-paid by the petitioner.

6.Corrigendum dated 13.04.2023 was issued by the respondent for stating that under Section 47(1) referred to in the show cause notice dated 29.03.2023, it should be read as Section 47(2) of the GST Act. The petitioner had submitted a reply dated 25.04.2023, pointing out the detailed objections to the proposals in the above notice and requested to drop the same by the reply dated 25.04.2023.

7. The petitioner submitted that a registered person is liable to pay the late fee under Section 47(2) only when he fails to furnish the return in FORM GSTR-9 under Section 44 of the CGST / SGST Act. GSTR-9C is only a reconciliation statement to be filed along with the annual return and FORM GSTR-9C is not a return as contemplated under Section 44

of the CGST / SGST Act. Late fee is leivable upto the late filing of GSTR 9 return and not GSTR-9C reconciliation statement.

8. The respondent, however, did not agree with the objections raised by the petitioner, and passed the order in original dated 21.08.2023, confirming the demand of late fee of Rs. 2,93,600/- (Rs.1,46,800/- under CGST Act and Rs.1,46,800/-under the SGST Act) under Section 47(2) of the CGST / SGST Act, for delay in filing of returns prescribed under Section 44(2) of the CGST / SGST Act for the period from 2017-2018, 2019-2020. An amount of Rs. 57,600/- has been paid by the petitioner towards the late fee was appropriated against the demand confirmed.

9. Learned counsel for the petitioner has submitted that the Government has issued Notification No.7/2023-CT dated 31.03.2023, providing for an Amnesty Scheme with respect to the non filers of GSTR-9 returns in exercise of the powers conferred under Section 128 of the CGST / SGST Act on the recommendation of the GST council, whereby, for non filers of the returns for the financial years 2017-2018 to 2021-2022, time for filing the returns in GSTR-9 and 9C was initially provided upto 30.06.2023. By the subsequent notification No.25/2023, i.e., 30.06.2023, it was extended up to 17.07.2023. Under the said Amnesty Scheme, the late fee in excess of Rs.10,000/- to be paid under Section 47 of CGST / SGST Act, with respect to the returns for the financial years 2017-2018 to 2019-2020 has been waived.

10. It is submitted that the petitioner had filed the annual return for the said year as early as in the years 2020-2021 and before the commencement of the Amnesty Scheme, i.e., on or before the commencement of the Amnesty Scheme with effect from 01.04.2022 and therefore, it is submitted that the petitioner should also be extended the benefit of the said notifications, and the order in question in Ext.P4, be set aside.

11. On the other hand, Mr. Sreelal Warriar, the learned Standing counsel appearing for the respondents in the writ petitions has supported the stand of the revenue that the Amnesty Scheme is applicable only to the persons who had not filed the return for the financial years 2017-2018, 2018-2019 and 2019-2020, and not the persons who had filed the return for the said financial years before 01.04.2023. The dealers who did not file the returns for the financial year (s) 2017-2018, 2018-2019 and 2019-2020 but furnished the returns on or after 01.04.2023 upto 31.08.2023, the late fee would be limited to Rs.10,000/- only. This Amnesty scheme is not available to the persons who had already filed their return before 01.04.2023, for the said financial years. It is also submitted that under the unamended Section 44 of the CGST / SGST ACT, the FORM GSTR 9 and 9C were required to be filed together and therefore, if the GSTR-9C was not filed along with GSTR-9, it could not be said that the dealer had filed the annual return as contemplated under the provisions of Section 44 of the CGST / SGST Act. It is therefore, submitted that the date of filing of the GSTR-9C would be the relevant date

for calculating the late fee, if the same is not filed along with the GSTR-9.

12. Learned counsel for the respondents supported the impugned order and has prayed for the dismissal of the writ petition.

13. I have considered the submission advanced.

14. GSTR-9C is an annual GST Reconciliation statement that reconciles the figures reported in GSTR-9 annual return with the audited financial statements of the tax payer. Form GSTR -9C was earlier applicable to registered persons with more than Rs. Two Crores as annual turn over in a particular financial year, but, with effect from 01.08.2021, now it is applicable for turnover exceeds Rupees Five Crores.

15. Before amendment, books and records needed to be audited under Section 35(5) and 9C reconciliation statement certified by Auditor/CA/CMA was required to be filed along with the reconciliation statement. Requirements under Section 35(5) were removed from the financial year 2020-2021 onwards, in view of the amendment effected with effect from 01.08.2021.

16. Now in view of the amendment, FORM GSTR 9C reconciliation statements to be self certified by the tax payers themselves.

17. Form GSTR 9C is used by the tax authorities to check the discrepancies in the taxpayer's reporting and compliance. If any discrepancy stands unresolved, the department can issue notice. Proper GST annual returns and reconciliation statements by the specified tax payers would lower the chances of any GST demand notices.

18. Before amendment brought by the Finance Act, 2021 with effect from 01.08.2021, the procedure for filing the GSTR 9C can be summarized as; a taxpayers having aggregate turnover upto Rs. Two Crores was to get accounted, audited annually under Section 35(5) of the CGST Act under Section 35(5) of the CGST / SGST Act and prepare an audited annual financial statement. After the conclusion of the GST Audit, Form GSTR 9C reconciliation statement had to be prepared with mention of any differences between the audited financial statement and Form GSTR-9 (GST annual return) for the financial year and certified by the same Auditor / CA/ CMA.

The then Form GSTR 9C had two parts;

a) Reconciliation statement with the mention of any differences and additional liability due to non reconciliation;

b) Certification by the Auditor / CA / CMA .

19. Once the certification was complete, taxpayers needed to file both Form GSTR-9 and GSTR-9C on the GST portal on or before 31st December following that financial

year. Additional liability reported in GSTR 9C was to be paid through Form DRC 03.

Unamended Section 44 which provided for filing annual return would read as under:-

S.44: Every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person, shall furnish an annual return for every financial year electronically in such form and manner as may be prescribed on or before the thirty-first day of December following the end of such financial year.

*[Provided that the Commissioner may, on the recommendations of the Council and for reasons to be recorded in writing, by notification, extend the time limit for furnishing the annual return for such class of registered persons as may be specified therein:

Provided further that any extension of time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.] w.e.f 1.1.2020*

S.44(2): Every registered person who is required to get his accounts audited in accordance with the provisions of sub-section (5) of section 35 shall furnish, electronically, the annual return under sub-section (1) along with a copy of the audited annual accounts and a reconciliation statement, reconciling the value of supplies declared in the return furnished for the financial year with the audited annual financial statement, and such other particulars as may be prescribed.

[Explanation. - For the purposes of this section, it is hereby declared that the annual return for the period from the 1st July, 2017 to the 31st March, 2018 shall be furnished on or before the 1st December, 2019 and the annual return for the period from the 1st April, 2018 to the 31st March, 2019 shall be furnished on or before the 31st March, 2020.] - Removal of Difficulty order dt.14.11.2019

Section 35(5) which was omitted by the Finance Act, 2021 with effect from 01.08.2021 would read as under.

S.35(5): Every registered person whose turnover during a financial year exceeds the prescribed limit shall get his accounts audited by a chartered accountant or a cost accountant and shall submit a copy of the audited annual accounts, the reconciliation statement under sub-section (2) of section 44 and such other documents in such form and manner as may be prescribed

Rule 80(3) which prescribes annual return before its substitution by Notification 30/2021 dated 30.07.2021 with effect from 01.08.2021 would read as under:-

Rule 80 Annual return.- (3): Every registered person 'other than those referred to in the proviso to sub-section (5) of section 35, whose aggregate turnover during a financial year exceeds two crore rupees shall get his accounts audited as specified under sub-section

(5) of section 35 and he shall furnish a copy of audited annual accounts and a reconciliation statement, duly certified, in FORM GSTR-9C, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner.

20. The substantial changes have been brought in by the Finance Act, 2021 with effect from 01.08.2021 in respect of filing the annual return as GSTR-9C.

Section 44 stands amended with effect from 01.08.2021. The amended Section 44 on reproduction would read as under:-

S. 44 (1) Every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person shall furnish an annual return which may include a self-certified reconciliation statement, reconciling the value of supplies declared in the return furnished for the financial year, with the audited annual financial statement for every financial year electronically, within such time and in such form and in such manner as may be prescribed:

Provided that the Commissioner may, on the recommendations of the Council, by notification, exempt any class of registered persons from filing annual return under this section

Provided further that nothing contained in this section shall apply to any department of the Central Government or a State Government or a local authority, whose books of account are subject to audit by the Comptroller and Auditor-General of India or an auditor appointed for auditing the accounts of local authorities under any law for the time being in force.

[(2) A registered person shall not be allowed to furnish an annual return under sub-section (1) for a financial year after the expiry of a period of three years from the due date of furnishing the said annual return:

Provided that the Government may, on the recommendations of the Council, by notification, and subject to such conditions and restrictions as may be specified therein, allow a registered person or a class of registered persons to furnish an annual return for a financial year under sub-section (1), even after the expiry of the said period of three years from the due date of furnishing the said annual return."J-inserted by Finance Act 2023 w.ef. 1.10.2023

Amended Rule 80 with effect from 01.08.2021 would read as under:-

Rule 80. Annual return.- (3) Every registered person, other than those referred to in the second proviso to section 44, an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person, whose aggregate turnover during a financial year exceeds five crore rupees, shall also furnish a self-certified reconciliation statement as specified under section 44 in FORM GSTR-9C along with the annual return referred to in sub-rule (1), on or before the thirty-first day of December following the end of such financial year, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner."

21. From the reading of the aforesaid provisions, it would be relevant to note that two key changes have been made by the Finance Act, 2021 with effect from 01.08.2021 i.e Section 35(5) CGST / SGST Act stands omitted, Section 44 of the CGST / SGST stands substituted. Form GSTR-9C becomes applicable to taxpayers with an annual aggregate turnover of more than Rs. Five Crores. CA/ CMA certification stands removed from financial years 2020-2021. With effect from 01.08.2021, taxpayers are now required to self-certify a voluntary reconciliation statement and file it with the tax authorities on or before 31st December of the year following the relevant financial year. The format of Form GSTR-9C has been modified to support self-certification. It is evident from amended Section 44 which provides that the taxpayer "shall furnish an annual return which may include a self-certified reconciliation statement,... with the audited annual financial statement."

22. Though Section 44 uses the phrase "shall furnish an annual return which may include, however, the amended Rule 80 makes GSTR-9C mandatory for the taxpayer, whose aggregate turnover above Rs. Five Crores.

23. It is not in dispute that the GST portal does not support payment of late fee for late filing GSTR-9C. The GST portal enables to charge late fee for GSTR-9 only . The other returns for which the late fee is collected are GST 3B (monthly return) GSTR 4(annual return of composition levy) GSTR 5 (return for non resident taxable person), GSTR 5A (summary return reporting OIDAR service from outside India made to non taxable persons in India), GSTR-6 (monthly return by input service distributor), GSTR 7(returns for persons deducting TDS), and GSTR-8 (monthly returns for e-commerce operators).

Annual return GSTR-9 filed without 9C may be deficient attracting general penalty. However, late fee cannot be made applicable for regularising the GSTR9 by filing GSTR9C.

24. As mentioned above GST council in 49th meeting in Agenda No.4(iv) agreed for rationalisation of late fee for delayed submission of GSTR-9 annual return and amnesty

for non-filers of GSTR-9 among others accepting the recommendation of law committee. The late fee as well as its upper limit were thereby substantially reduced for two turnover slabs- i) up to Rs. Five Crores and ii) Rs. Five Crores to Rs. Twenty Crores as per notification No.7/2023 dated 31.03.2023. One time Amnesty for non-filers of GSTR 9 is also given for the first time as per the same notification following the council recommendation. Late fee in excess of Rs.10,000/-stands waived and this amnesty covers five financial years 2017-2018 to 2021-2022. The period for submitting return under the amnesty was from 01.04.2023 to 31.08.2023 as noted above by the Notification No.25/2023 dated 17.07.2023, issued in exercise of the powers conferred under Section 128 of the CGST / SGST Act.

25. When the Government itself has waived late fee under the aforesaid two notifications Nos.7/2023 dated 31.03.2023 and 25/2023 dated 17.07.2023 in excess of Rs.10,000/-, in case of non-filers there appears to be no justification in continuing with the notices for non payment of late fee for belated GSTR 9C, that too filed by the taxpayers before 01.04.2023, the date on which one time amnesty commences.

In view of the aforesaid discussion, I am of the view that notices are unjust and unsustainable to the extent it sought to collect late fee for delay in filing GSTR 9C. However, it is made clear that the petitioners will not be entitled to claim refund of the late fee which has already paid by them over and above Rs.10,000/-

With aforesaid directions, all these writ petitions stand allowed.