



2025:KER:30649

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

TUESDAY, THE 8TH DAY OF APRIL 2025 / 18TH CHAITHRA, 1947

WP(C) NO. 14743 OF 2025

PETITIONER:

**ST. ANTONY TRADING AND TRANSPORT PVT. LIMITED
VELLARA HOUSE, VYLATHUR, THRISSUR
REPRESENTED BY POWER OF ATTORNEY HOLDER
PV MERCY, PIN - 679563**

**BY ADVS.
AMMU CHARLES
K.MANOJ CHANDRAN
S.A.MANSOOR (PATTANAM)**

RESPONDENT :

**JOINT COMMISSIONER (APPEALS),
OFFICE OF JOINT COMMISSIONER (APPEALS),
STATE GST DEPARTMENT, KERALA, THIRD FLOOR,
STATE GST COMPLEX, POOTHOLE ,
THRISSUR, PIN - 680004**

**BY ADV. JASMIN M.M.
GOVERNMENT PLEADER**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 08.04.2025, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**



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BECHU KURIAN THOMAS, J.

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Dated this the 8th day of April, 2025

JUDGMENT

Petitioner challenges the orders of the Appellate Authority under the Central Goods and Services Tax Act, 2017 (for short, the CGST Act') for the financial years 2020-21 and 2021-22.

2. Pursuant to orders issued under Section 73 of the CGST Act for the aforementioned two financial years, petitioner preferred appeals before the respondent. However, by the impugned orders, both the appeals were dismissed after noticing the non-appearance of the petitioner. Despite granting three adjournments, when the petitioner failed to appear for hearing, the Appellate Authority dismissed the appeals without formulating any of the points for determination and even without giving any reason except the non-appearance of the petitioner. Aggrieved by the above two orders, petitioner has approached this Court under Article 226 of the Constitution of India.

3. I have heard Smt. Ammu Charles, the learned counsel for the petitioner as well as Smt. Jasmin M. M., the learned Government Pleader.

4. The question that arises for determination is whether the Appellate Authority under the CGST Act can dismiss appeals for



default?

5. Section 107(12) of the CGST Act specifically states that the order of the Appellate Authority disposing of the appeal shall be in writing and shall state the points for determination and the reasons for the decision. In the light of sub-clause (12) of Section 107 of the CGST Act, it is evident that the Appellate Authority has to consider the matter on merits and is not entitled to dismiss an appeal merely for non-appearance. Of course, when there is failure of the appellant to appear, the Appellate Authority shall not grant more than three adjournments to a party during the hearing of the appeal. Despite the failure of an appellant to appear, the Appellate Authority has to pass an order after determining the points for consideration, and the decision should be on merits.

6. Interpreting Section 107 of the CGST Act, a Division Bench of the High Court of Patna had, in ***Purushottam Stores vs. State of Bihar*** [(2023) 75 GSTL 276 (Patna)] observed as follows;

“The specific statutory mandate is that after hearing the appellant, the Appellate Authority is to make further enquiry, if found necessary and pass such orders as it thinks just and proper, confirming, modifying or annulling the decision or order appealed against. Such affirmation, modification or annulment shall not be an empty formality nor can it be mechanical, without the consideration of the grounds of appeal. We observe so, specifically when the Appellate Authority is empowered



to refuse the prayer for adjournment made by an appellant, if on three prior occasions, such adjournment has been allowed, in which case also the Appellate Authority cannot absolve itself from the obligation to conduct such further enquiry as is mandated under sub-section (11) of Section 107. Sub-section (12), it has to be further emphasized, also requires the order of the Appellate Authority disposing of the appeal to be in writing and specifically stating the points for determination, the decision thereon and the reasons for such decision. When an appeal is dismissed for reason only of absence of the appellant or lack of effective prosecution, then the Tribunal should be found to have abdicated its powers and not followed the statutory mandate.”

7. Apart from the above, the Division Bench of the Patna High Court has also considered the observations of the Supreme Court in ***Commissioner of Income Tax, Madras v. Chenniappa Mudaliar, Madurai*** [(1969) 1 SCC 591] while dealing with the Income Tax Act.

8. In the light of the above principle, when the impugned order is appreciated, it is noticed that the points for determination had not been stated and the order was not issued on merits. There is no consideration of any of the issues raised by the appellant, and hence, the impugned order is perverse and is liable to be interfered with, in exercise of the jurisdiction under Article 226 of the Constitution of India.



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9. Accordingly, Exhibit-P5 and Exhibit-P6 orders of the respondent are set aside and the respondent is directed to reconsider the matter afresh, after granting a fresh opportunity of hearing to the petitioner.

The writ petition is allowed as above.

Sd/-

**BECHU KURIAN THOMAS
JUDGE**

Jka/08.04.2025.



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APPENDIX OF WP(C) 14743/2025

PETITIONER'S EXHIBITS

Exhibit P1	TRUE COPY OF THE ASSESSMENT ORDER DATED 25.07.2022 FOR FY 2020-21
Exhibit P2	TRUE COPY OF THE ASSESSMENT ORDER DATED 25.07.2022 FOR AY 2021-22
Exhibit P3	TRUE COPY OF THE FORM GST APL 01 APPEAL BEFORE THE APPELLATE AUTHORITY DATED 07.11.2022 FOR THE PERIOD OF DISPUTE FROM 01.05.2020 TO 31.03.2021
Exhibit P4	TRUE COPY OF THE FORM GST APL 01 APPEAL BEFORE THE APPELLATE AUTHORITY DATED 07.11.2022 FOR THE PERIOD OF DISPUTE FROM 01.04.2021 TO 31.07.2021
Exhibit P5	TRUE COPY OF THE APPEAL ORDER NO. OIA JC TSR 2022 GSTA-462T DATED 31.01.2025
Exhibit P6	TRUE COPY OF THE APPEAL ORDER NO. OIA JC TSR 2022 GSTA-463T DATED 31.01.2025