



Lawgics

By Nidhi, Advocate



Judgment No.: 007
Dt.: 03-11-2023



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Judgment Deals With

Section/Rule	Section 73 of CGST Act, 2017
Authority	Kerala High Court
Case Name	M/s. Global Plasto Wares VS Assistant State Tax Officer
Dated	17 th October, 2022

Brief Facts:

The petitioner has grievance in respect of the penalty assessed in the impugned order dated 14.09.2023. The petitioner has paid all tax before 30 days from the date of the notice. The notice is dated 28.02.2022 and the petitioner has paid the tax on 10.03.2022. The question is whether an assessee who had paid the tax within thirty days from the issue of notice along with interest would be held to be liable for penalty. He has collected the tax and has not paid it to the Government within 30 days from the date from he collected.

Contention of Petitioner:

Reliance was placed on Section 73(8) of the GST Act, 2017 that if a person chargeable with tax under Sub-section (1) or Subsection (3) of Section 73 of the GST Act, 2017 paid the tax along with the interest payable under Section 50 within 30 days of issue of notice, no penalty shall be payable and all proceedings in respect of the said notice would be deemed to be concluded.

Contention of Department:

Section 73(8) comes into play when an assessee has not paid the tax on the transactions. But where the assessee has collected from the others and not credited it to the Government, it is Section 73(11) which comes into play & Section 73(11) of the GST Act, 2017 begins with a non-obstante Clause which provides that penalty under sub-section (9) shall be payable where any amount of self-assessed tax or any amount collected as tax has not been paid within 30 days from the due date of payment of such tax.

Findings & Order:

Considering the provisions of Sub-sections 6, 8 and 9 of Section 73 of the GST Act, it is provided that if a person chargeable to tax fails to deposit the tax collected by him within 30 days from the due date of the payment of the such tax, Sub-section 8 will not have any effect and such a person is liable to pay penalty. Thus, the Assessing Authority has taken the correct view in the matter and, therefore, there is no error of law which requires interference by the Court.

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