

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

FRIDAY, THE 3RD DAY OF NOVEMBER 2023 / 12TH KARTHIKA, 1945

WA NO. 1853 OF 2023

AGAINST THE JUDGMENT WP(C) 31184/2023 OF HIGH COURT OF
KERALA

APPELLANT/PETITIONER:

NAHASSHUKOOR,
AGED 32 YEARS
S/O ABDUL SHUKOOR, PROPRIETOR M/S N. S. METALS,
JAMEELAMANZIL, SANATHANAM WARD,
ALAPPUZHA, PIN - 688001

BY ADV A.KRISHNAN

RESPONDENTS/RESPONDENTS:

- 1 ASSISTANT COMMISSIONER
SECOND CIRCLE, STATE GOODS & SERVICE TAX
DEPARTMENT, COLLECTORATE, ALAPPUZHA, PIN - 688001
- 2 UNION OF INDIA
REPRESENTED BY SECRETARY TO GOVERNMENT, MINISTRY
OF FINANCE (DEPARTMENT OF REVENUE), NORTH BLOCK,
NEW DELHI, PIN - 110001
- 3 CENTRAL BOARD OF INDIRECT TAXES & CUSTOMS,
GST POLICY WING, NORTH BLOCK, NEW DELHI - 110001,
REPRESENTED BY PRINCIPAL COMMISSIONER (GST).,
PIN - 110001



2023:KER:69725

WA Nos.1853 & 1857/2023

-:2:-

- 4 STATE OF KERALA
REPRESENTED BY GOVERNMENT PLEADER, HIGH COURT OF
KERALA, PIN - 682031
- 5 STATE TAX OFFICER, (ARREAR RECOVERY)
OFFICE OF JOINT COMMISSIONER, TAX PAYER SERVICES,
STATE GOODS & SERVICE TAX DEPARTMENT, ALAPPUZHA,
PIN - 688001

BY ADV K.MALINI

OTHER PRESENT:

SR GP SRI V K SHAMSUDHEEN AND SC : SRI SREELAL N
WARRIER

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
03.11.2023, ALONG WITH WA.1857/2023, THE COURT ON THE SAME
DAY DELIVERED THE FOLLOWING:



2023:KER:69725

WA Nos.1853 & 1857/2023

-:3:-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

FRIDAY, THE 3RD DAY OF NOVEMBER 2023 / 12TH KARTHIKA, 1945

WA NO. 1857 OF 2023

AGAINST THE JUDGMENT WP(C) 31165/2023 OF HIGH COURT OF
KERALA

APPELLANT/PETITIONER:

ANSIL IBRAHIM,
AGED 43 YEARS
S/O IBRAHIM, PROPRIETOR M/S LIGHT HOUSE,
CHERAKKULAM, POWER HOUSE ROAD, ALAPPUZHA, PIN -
688007

BY ADV A.KRISHNAN

RESPONDENTS/RESPONDENTS:

- 1 ASSISTANT COMMISSIONER
SECOND CIRCLE, STATE GOODS & SERVICE TAX
DEPARTMENT, COLLETORATE, ALAPPUZHA, PIN - 688001
- 2 UNION OF INDIA
REPRESENTED BY SECRETARY TO GOVERNMENT, MINISTRY
OF FINANCE (DEPARTMENT OF REVENUE), NORTH BLOCK,
NEW DELHI, PIN - 110001



2023:KER:69725

WA Nos.1853 & 1857/2023

-:4:-

- 3 CENTRAL BOARD OF INDIRECT TAXES & CUSTOMS,
GST POLICY WING, NORTH BLOCK, NEW DELHI - 110001,
REPRESENTED BY PRINCIPAL COMMISSIONER (GST)., PIN
- 110001
- 4 STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT, TAXES
DEPT., GOVT. SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001
- 5 STATE TAX OFFICER,
(ARREAR RECOVERY) OFFICE OF JOINT COMMISSIONER,
TAX PAYER SERVICES, STATE GOODS & SERVICE TAX
DEPARTMENT, ALAPPUZHA, PIN - 688001

BY ADV ANILKUMAR C.R.

OTHER PRESENT:

SR GP SRI V K SHAMSUDHEEN AND SC : SRI SREELAL N
WARRIER

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
03.11.2023, ALONG WITH WA.1853/2023, THE COURT ON THE SAME
DAY DELIVERED THE FOLLOWING:



2023:KER:69725

WA Nos.1853 & 1857/2023

-:5:-

J U D G M E N T

Dr. Kauser Edappagath, J.

As common questions of law and facts are involved in the above writ appeals, we dispose of the same together by a common judgment.

2. The issue involved is with respect to the entitlement of the purchasing dealer to take credit of input tax levied on the goods he purchased from the supplying dealer under section 16 of the Central Goods and Services Tax Act (for short, 'the CGST Act'). Incidentally, the provisions of Section 16(2)(c) of the CGST Act and Rule 36(4) of the Central Goods and Services Tax Rules (for short, 'the CGST Rules') are challenged as unconstitutional.

3. The appellant in WA No. 1853/2023 is the petitioner in WP(C) No.31184/2023, and the appellant in WA No.1857/2023 is the petitioner in WP(C) No.31165/2023. The former is doing business in the name and style of M/s. N.S Metals, while the latter is doing business in the name and style of M/s.Light House. The