IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

WEDNESDAY, THE 8TH DAY OF JULY 2026 / 17TH ASHADHA, 1948

WP(C) NO. 19986 OF 2021

PETITIONERS:

1 EMAS GOLD AND DIAMONDS LLP
2ND FLOOR, KASCO PLAZA,
RAM MOHAN ROAD, KOZHIKODE 673 004,
REP.BY ITS DESIGNATED PARTNER AND CHAIRMAN BASHEER K.P.

2 SHRI. BASHEER K.P.
AMAN HOUSE, NEDDUNKANDATHIL, CHUNDAPPURAM,
KODUVALLY P.O., KOZHIKODE 673 572
(DESIGNATED PARTNER AND CHAIRMAN
M/S. EMAS GOLD AND DIAMONDS LLP)

3 SHRI. ANWAR P.V.
PARAPARAMBIL VELLANGOT HOUSE, THALAKKADATHOOR PO,
TIRUR, MALAPPURAM 676 103,
(DESIGNATED PARTNER AND MANAGING PARTNER,
M/S. EMAS GOLD AND DIAMONDS LLP)

BY ADVS.
SRI.K.SRIKUMAR (SR.)
SMT.AMMU CHARLES
SRI.K.MANOJ CHANDRAN

RESPONDENTS:

1 THE JOINT COMMISSIONER
OFFICE OF THE JOINT COMMISSIONER,
CENTRAL GST AND CENTRAL EXCISE,
C.R.BUILDING, MANANCHIRA, KOZHIKODE 673 001

***ADDL.2 JOINT DIRECTOR,**
DIRECTORATE GENERAL OF GST INTELLIGENCE,
OFFICE OF THE ADDITIONAL DIRECTOR GENERAL,
KOCHI ZONAL UNIT, CENTRAL EXCISE BHAVAN,
KATHRIKADAVU, KALOOR P.O., KOCHI-682 017

***IS SUO MOTU IMPLEADED AS THE ADDITIONAL 2ND RESPONDENT IN THE WRIT PETITION AS PER ORDER DATED 08.07.2026.**

BY ADV SREELAL N. WARRIER, SC, CENTRAL BOARD OF EXCISE

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 08.07.2026, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

This writ petition is submitted by the petitioners, challenging Ext.P4 order passed by the 1st respondent under Sec.74 as well as Sec.130 of the CGST Act read with Sec.67. The challenge is raised by the petitioners, mainly on the ground that, the petitioners were deprived of a proper opportunity to defend the matter, as the cross-examination sought by some of the witnesses, whose statements were relied on by the adjudicating authority, was rejected and thus, the procedure that culminated in Ext.P4 was in violation of the principles of natural justice. Apart from the above, a specific ground was raised in the writ petition, to the effect that, the proceedings under Sec.74 were initiated for multiple assessment years as a 'block assessment' whereas, the scheme of the Act contemplate only for a particular tax period. Thus, the intervention of this Court is sought under Article 226 of Constitution of India, instead of invoking the statutory remedy of appeal.

2. The brief facts that are necessary for considering the issues involved in this writ petition are as follows:

2.1. The 1st petitioner is a limited liability partnership engaged in the business of wholesale jewellery. The 2nd and 3rd petitioners are the Chairman and Managing Partner of the 1st petitioner firm. On 11.12.2019, the premises of the 1st petitioner was searched by the Department of GST and in the said process, the entire stock-in-trade kept in display counter and other places, consisting of 14,633.65 grams of ornaments 1,430.42 grams of gold pieces along with books documents, computer system and other devices etc. were seized, invoking the powers under Section 67(2) of the CGST Act. The statement of the 2nd petitioner, the Chairman, was recorded as part of the said procedure and immediately thereafter, i.e., on 16.12.2019 the 2nd petitioner was arrested.

According to the petitioners, while the Chairman was under the detention, the statements of other employees were recorded, and based on the same, proceedings were initiated, by issuing Ext.P1 show cause notice dated 19.10.2020, proposing to impose liability upon the 1st petitioner. The 1st petitioner submitted Exts.P2 and P3 reply to the said show cause notice, where the 1st petitioner while raising the contentions opposing the allegations raised against the 1st petitioner in Ext.P1, sought permission to examine the persons whose statements were relied on by the adjudicating authority and the 1st respondent, in the show cause notice. The 1st petitioner has a specific case that, the statements of the employees of the 1st petitioner were recorded by the authorities under compulsion, at a time when, the 2nd petitioner, the Chairman of the 1st petitioner was under detention and therefore, cross-examination of the said witnesses were absolutely necessary to establish the defense raised by the 1st petitioner.

2.2. However, without taking any decision on the request made by the 1st petitioner for cross-examination of the said witnesses, Ext.P4 order was passed, finalizing the proceedings, by imposing liability under Section 74 of the CGST Act and also ordering confiscation of the gold recovered from the possession of the 1st petitioner during the search, by invoking the powers under Section 130 of the CGST Act. Some of the employees of the 1st petitioner, against whom notices were issued as part of the proceedings, were also imposed with certain penalties, for aiding and abetting the 1st petitioner. This writ petition is submitted by the petitioners challenging Ext.P4.

3. A detailed statement as well as a counter affidavit was filed by the respondents, in response to the averments contained writ petition. In the said counter affidavit, the respondents have

clearly explained the entire procedure followed, while arriving at the decision as per Ext.P4, and answered all the contentions raised by the petitioners in the writ petition. The 2nd petitioner has filed a reply affidavit to the same.

4. I have heard Sri.K. Srikumar, learned Senior Counsel, appearing for the petitioners and Sri.Sreelal N. Warrier, learned Standing Counsel appearing for the respondents.

5. The learned Senior Counsel specifically contended that, despite the fact that, the 1st petitioner had specifically requested for an opportunity to cross-examine the persons, whose statements were relied on in the show cause notice, instead of passing a separate order on the said request, the order rejecting the said request was passed only along with the final adjudicating order namely, Ext.P4 and therefore, the 1st petitioner was deprived of a proper opportunity to challenge the said order before the

finalization of the proceedings. Apart from the above, the learned Senior Counsel brought to the attention of this Court, the reasons stated by the 1st respondent in Ext.P4, while rejecting the request for cross-examination as contemplated in Clause 12.11 of the order. It was pointed out that, the statements cited were that, the statements, which were relied on, were not retracted by the persons concerned, and that the statements of those witnesses were corroborated with other documents as well.

6. Apart from the above, in Ext.P4, it is also stated that, the persons whose cross-examination was sought, are the employees of the 1st petitioner and hence, an apprehension was voiced by the adjudicating officer that, by passage of time they might have been influenced by the petitioners. Thus, it was opined in Ext.P4 that, if an opportunity of cross-examination is permitted, that would be biased and skewed in favour of the 1st petitioner and therefore,

would not be in the interest of natural justice. An adverse inference was also drawn from the fact that, the cross-examination has been specifically sought only for those persons, who are employees and partners and not of any third parties like dealers, software supplier etc. whose statements have been relied on in SCN. It is pointed out that, none of the reasons cited by the 1st respondent in Ext.P4, are sustainable in view of the fact that, those are not at all relevant for consideration. According to the learned Senior Counsel, if the statements of the said witnesses are being relied on, the 1st petitioner will have to be provided with an opportunity to cross-examination if asked for, since the same form part of the principles of natural justice. The learned Counsel places reliance upon the judgment rendered by the Hon'ble Supreme Court in **Andaman Timber Industries v. Commissioner of Central Excise, Kolkata-II [2016 (15) SCC 785]**, the decision rendered by the Gujarat High Court in

Commissioner of Central Excise v. Gujarat Cypromet Ltd. [LAWS(GJH)-2013-3-383], the decision rendered by the High Court of Calcutta in **Sampad Narayan Mukherjee v. Union Of India And Ors [LAWS(CAL)-2019-2-4]** and the decision rendered by the Rajasthan High Court in **Shree Parvati Metals, Through Surendra Chauhan Proprietor v. Union Of India Through Commissioner Of Central Excise, NCRB, Customs, Central Excise And Service Tax Appellate Tribunal [2018 (1) TMI 208]**.

7. On the other hand, the learned Standing Counsel for the respondents vehemently opposes the said contentions, by pointing out that, the 1st petitioner does not have any absolute right to get an opportunity to cross-examine all the witnesses. According to him, the power is vested upon the adjudicating authority to decide the question whether such cross-examination is necessary or not, and in this case, that power was properly exercised by providing proper

reason in Ext.P4. It is also pointed out that, in Ext.P4 itself, it is specified that, apart from the statements of the witnesses whose cross-examination is sought by the 1st petitioner, there are other evidence, which would amply prove the charges against the 1st petitioner and therefore, the denial of the cross-examination of the said persons by itself, cannot be a reason to interfere in Ext.P4 order. Apart from the above, it is also pointed out that, as far as the challenge raised against Ext.P4 is concerned, the same basically arises from disputed questions of fact and since there is an effective appellate remedy provided against Ext.P4, this Court need not invoke the jurisdiction under Article 226 of Constitution of India and instead, it is for the petitioners to invoke the statutory remedies before the appropriate forum to get the factual disputes, as referred to above, resolved.

8. I have carefully gone through the records and

considered the contentions raised from both sides. One of the crucial contentions raised by the petitioners, is in relation to the order passed for multiple assessment years, as a block period. In ground (J) of the writ petition, a specific ground in this regard has been taken, by stating that, the assessment should have been completed based on the tax period as defined under Section 2(106) of the CGST Act, instead of completing the assessment as a block assessment for 2017-18, 2018-19 and 2019-20. As far as the said question on concerned, this Court has specifically accepted the said contention in **Joint Commissioner (Intelligence & Enforcement) v. M/s. Lakshmi Mobile Accessories [2025 KHC OnLine 149]** and **Tharayil Medicals (M/s.), Thrissur v. Deputy Commissioner, Thrissur [2025 KHC OnLine 467],** where, it was observed that, a composite notice for multiple assessment years while completing the assessment under Section 74 of the CGST Act is not legally sustainable. Therefore, on that reason itself Ext.P4 is liable to be interfered with.

9. Even while arriving at the said conclusion and by holding that the matter is liable to be remanded for fresh consideration by the respondent adjudicating authority, for completeness, and in the interest of both the parties, this Court feels that the question regarding the necessity to extend the opportunity to cross-examine the witnesses is also to be answered. Otherwise, the same question may again pop up in the next round of litigation. Therefore, I am answering that question in this judgment.

10. While considering the aforesaid aspect, the crucial element to be noticed is that, it is evident from Exts.P2 and P3 that, the 1st petitioner had sought permission to cross-examine the witnesses whose statements are relied on in the show cause notice. It is the specific case of the petitioners that, such request was made

in Ext.P2, as well as Ext.P3, much before issuance of Ext.P4. However, instead of taking a decision on the same before proceeding to adjudicate the question finally, the adjudicating authority passed Ext.P4 order. Of course, in Ext.P4, the reason for rejecting the request for cross-examination was cited, but, as rightly pointed out by the petitioners, since the request made by the 1st petitioner for cross-examination was rejected only along with final order passed as evidenced by Ext.P4, the petitioners were compelled to challenge the same in a writ petition, instead of invoking the appellate remedy. This is because, according to the petitioners, the same amounts to violation of principles of natural justice, as the 1st petitioner could not bring in all the defenses and supporting materials in evidence, by examining/ cross-examining the persons concerned, Therefore, according to the petitioner, invoking the appellate remedy may not be effective.

11. After carefully going through the records, I find some merits in the said submission. This is particularly because, going by the reasons in Ext.P4, for rejecting the request for cross-examination of the witnesses mentioned in Ext.P4, those appear to be not at all convincing. One of the reasons stated was that, the persons, whose statements were relied on, have not retracted from their statements. However, the question whether the witness concerned has retracted from the statement or not, is not a relevant criteria while determining the question as to whether, an opportunity has to be granted for cross-examination or not. The purpose of cross-examination is to test the veracity of the statement of the witnesses and in order to do the same, the person seeking cross-examination should get an opportunity to discredit the said witnesses. The same can only be done by cross-examining such persons. Therefore, even if the persons concerned have not

retracted from the statements, that by itself would not preclude the noticee against whom proceedings are initiated, from challenging those statements, by attempting to discredit the said witness through the cross examination. Therefore, that cannot be a reason justifiable in law, to deny the same. Apart from the above, it is evident that, all those statements were proposed to be relied on in Ext.P1 show cause notice and going by the findings in Ext.P4, those statements were indeed formed the basis of an opinion, which resulted in the ultimate conclusion arrived at by the adjudicating authority. Thus, the fact that those statements are relied on, is undisputed. Moreover, the petitioners have a specific case that, all those statements were recorded under compelling circumstances where, the Chairman of the institution was under detention.

12. Moreover, the petitioners have a case that, the statements of the employees were recorded, while the chairman was

under detention. Therefore, this is all the more a good reason that requires an opportunity to be provided to the 1st petitioner to cross examine the persons concerned. Observations made by the Honourable Supreme Court in ***Andaman Timber Industries*** *(supra)*, which is relied on by the learned Senior Counsel for the petitioners is also relevant in this regard. In paragraph Nos.6 and 7, it was observed as follows:

> "6. According to us, not allowing the assessee to cross-examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected. It is to be borne in mind that the order of the Commissioner was based upon the statements given by the aforesaid two witnesses. Even when the assessee disputed the correctness of the statements and wanted to cross-examine, the Adjudicating Authority did not grant this opportunity to

the assessee. It would be pertinent to note that in the impugned order passed by the Adjudicating Authority he has specifically mentioned that such an opportunity was sought by the assessee. However, no such opportunity was granted and the aforesaid plea is not even dealt with by the Adjudicating Authority. As far as the Tribunal is concerned, we find that rejection of this plea is totally untenable. The Tribunal has simply stated that cross-examination of the said dealers could not have brought out any material which would not be in possession of the appellant themselves to explain as to why their ex-factory prices remain static. It was not for the Tribunal to have guess work as to for what purposes the appellant wanted to cross-examine those dealers and what extraction the appellant wanted from them.

7. As mentioned above, the appellant had contested the truthfulness of the statements of these two witnesses and wanted to discredit their testimony for which purpose it wanted to avail the opportunity of cross-examination. That apart, the Adjudicating Authority simply relied upon the price list as maintained at the depot to determine the price for the purpose of levy of

excise duty. Whether the goods were, in fact, sold to the said dealers/witnesses at the price which is mentioned in the price list itself could be the subject matter of cross-examination. Therefore, it was not for the Adjudicating Authority to presuppose as to what could be the subject matter of the cross-examination and make the remarks as mentioned above. We may also point out that on an earlier occasion when the matter came before this Court in Civil Appeal No. 2216 of 2000, order dated 17.03.2005 was passed remitting the case back to the Tribunal with the directions to decide the appeal on merits giving its reasons for accepting or rejecting the submissions."

13. Similarly, the very same view has been followed in the decisions rendered by the High Court of Gujarat, High Court of Calcutta and the High Court of Rajasthan in ***Gujrat Cypromet Ltd*** *(supra)*, ***Sampad Narayan Mukarjee*** *(supra)* and ***Shree Parvati Metals*** *(supra)* respectively. Of course, the learned Standing Counsel for the respondents contended that, in Ext.P4, while citing

the reasons for rejecting the request for cross-examination, it was specifically observed that, apart from the statements of the witnesses, whose cross-examination was sought for by the 1st petitioner, there are other evidence as well, which are sufficient to make out the charges against the 1st petitioner. On going through the observations in this regard, as contained in Clause 12.11.5 of Ext P4, it can be seen that, the 1st respondent has stated that, apart from the statements of the persons whose cross-examination was sought by the 1st petitioner, there are other evidence in the form of documents recovered and submitted during the course of investigation. However, on a careful reading of the observations contained in the said paragraph, it is evident that, those documents have been treated only as corroborative evidence, in support of the statements recorded from the persons concerned during the course of the enquiry. This indicates that, even while placing reliance on the contents of the documents recovered and produced during the investigation, they have been regarded merely as evidence corroborating the statements made by the persons concerned. Thus, a clear link is established between the statements of the persons concerned and the documents relied upon by the respondents in the course of adjudication. This demonstrates that the adjudicating authority did not assess the evidentiary value of the documents independently. Instead, the documents were treated merely as corroborative evidence, lending support to the statements relied upon during the adjudication process. Thus, the contention of the learned standing counsel that, the finding was based on other evidence independently is not discernible from Ext.P4 order.

14. Moreover, as rightly pointed out by the learned Senior Counsel, in the order itself, all the statements of those witnesses are shown as relied upon documents. Thus, it is also one indication

that, the statement of those witnesses were relied on and hence cross-examination ought to have been granted. Moreover, in Ext.P4, while rejecting the opportunity to cross-examine, the respondents apprehended that, by providing cross-examination of those individuals, no purpose would be served, as it would be biased and skewed in favour of the first petitioner. However, such an impression could not have been drawn, merely because of the reason that the 1st petitioner is seeking a cross-examination of those witnesses. The question as to whether the statement that is brought out in cross-examination is biased or not, is a matter to be considered, upon evaluating the statement that is elicited in such cross-examination and under no circumstances, that cannot be a ground to deny the opportunity to cross-examination as such. Of course, it is true that in all cases, it is not necessary that the cross-examination should be provided to the party concerned, merely because it was asked for. It is for the adjudicating authority to take a reasonable decision as to whether it is to be granted or not. In case, the opportunity is denied, sound reasons are to be provided for denying the same. Therefore, I find that although the adjudicating authorities are vested with the power to deny the request for cross-examination in appropriate cases, on going through the reasons stated in Ext.P4 order while denying opportunity to the 1st petitioner, I am not at all convinced that the same are justifiable and sound. Therefore, to that extent an interference is required.

15. However, even while arriving at the said conclusion, one aspect is to be noticed. On going through the materials placed before this Court, it is evident that, some of the persons whose cross-examination was sought, are co-noticees and were imposed with penalty for aiding or abetting the first petitioner. As far as those persons are concerned, under no circumstances, the 1st

petitioner will have any right to seek cross-examination, as the same would amount to asking such witnesses to depose against himself. Therefore, right of the 1st petitioner to seek for cross-examination would be confined to the persons who are not co-noticees in the proceedings concerned. Thus, in the light of the aforesaid discussions, I am of the view that, an interference is to be made in the impugned order.

16. Another contention raised by the learned Senior counsel is with regard to certain documents relied on in the process of adjudication. The said documents are certain pocket diaries maintained by some gold smiths attached to the 1st petitioner. Even though the names of those gold smiths were specifically referred to in the adjudication order, according to the petitioners, the statements of those witnesses were not recorded and in the absence of any such statements, the contents of the said pocket diaries could

not have been relied on. I find some merit in the said contention. The document can be accepted into evidence or treated as a relevant piece of evidence, only if the same is produced or proved by any of the persons who authored the said documents or who were responsible to maintain the said documents. Evidently, in this case, none of these aspects are discernible from the discussion in Ext.P4 order and it is also not in dispute that the statements of the persons, whose names are referred to as persons maintaining the such documents (pocket diaries and such other documents), were not recorded. Therefore, it shall be open to the petitioners to summon those persons, if necessary.

In such circumstances, this writ petition is disposed of quashing Ext.P4, with a direction to the respondents 1 and 2 to, initiate fresh proceedings, after issuing separate notices to the petitioners for separate assessment years and to finalize the same after giving the petitioners an opportunity for being heard. It is further ordered that the 1st petitioner's request for examination/cross-examination of the witnesses, shall be considered and the same shall not be rejected on the reasons mentioned in Ext.P4. It is clarified that, since this writ petition was pending consideration since 2021, the period from the date of issuance of notice till the date of receipt of certified copy of this judgment, shall be excluded while computing the period of completion of proceedings. It is also clarified that, it shall be open for the petitioners to move appropriate application seeking reliefs before the adjudicating authority, in the light of the observations in this judgment.

Sd/-
ZIYAD RAHMAN A.A.
JUDGE

SM/SCS/DG

APPENDIX OF WP(C) NO. 19986 OF 2021

PETITIONER EXHIBITS

Exhibit P1	**TRUE COPY OF THE SHOW CAUSE NOTICE NO.17/2020 DATED 19.10.2020 ISSUED BY THE JOINT DIRECTOR, DGGI**
Exhibit P2	**TRUE COPY OF THE REPLY TO SHOW CAUSE NOTICE DATED 23.3.2021 SUBMITTED BY THE 1ST PETITIONER**
Exhibit P3	**TRUE COPY OF THE ARGUMENT NOTE SUBMITTED BY THE 1ST PETITIONER DATED 30.6.2021**
Exhibit P4	**TRUE COPY OF THE ORDER IN ORIGINAL 1/2021-22 GST DATED 12.8.2021**
Exhibit P5	**TRUE COPY OF THE INTERIM ORDER PASSED BY IN W.P.(C) .12334 OF 2021 DATED 14.7.2021**