

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

Tuesday, the 28th day of September 2021 / 6th Aswina, 1943WP(C) NO. 20304 OF 2021(K)PETITIONERS:

1. THE KERALA HIGH COURT ADVOCATES' ASSOCIATION, REPRESENTED BY ITS SECRETARY RENJITH T. R., NEW HIGH COURT COMPLEX, HIGH COURT ROAD, ERNAKULAM - 682 031.
2. THE SECRETARY, THE KERALA HIGH COURT ADVOCATES' ASSOCIATION, THROUGH ITS PRESENT SECRETARY RENJITH T. R., NEW HIGH COURT COMPLEX, HIGH COURT ROAD, ERNAKULAM - 682 031.

RESPONDENTS:

1. THE ASSISTANT COMMISSIONER, SGST DEPARTMENT, SECOND CIRCLE, CLASS TOWER, KARGIL LANE, ERNAKULAM - 682 018.
2. THE STATE TAX OFFICER, SGST DEPARTMENT, SECOND CIRCLE, CLASS TOWER, KARGIL LANE, ERNAKULAM - 682 018.
3. STATE OF KERALA, REPRESENTED BY THE SECRETARY (TAXES), GOVERNMENT OF KERALA, SECRETARIAT, THIRUVANANTHAPURAM - 695 001.
4. THE PRINCIPAL COMMISSIONER OF CGST AND CENTRAL EXCISE, KOCHI, CR BUILDING, IS PRESS ROAD, COCHIN - 682018.
5. THE JOINT COMMISSIONER OF CGST, CR BUILDING, IS PRESS ROAD, COCHIN - 682018.
6. THE SUPERINTENDENT OF CGST, CR BUILDING, IS PRESS ROAD, COCHIN - 682018.
7. THE ASSISTANT COMMISSIONER, ERNAKULAM DIVISION, IS PRESS ROAD, ERNAKULAM - 682031.
8. UNION OF INDIA, REPRESENTED BY REVENUE SECRETARY, DEPARTMENT OF REVENUE, MINISTRY OF FINANCE, GOVERNMENT OF INDIA, NORTH BLOCK, NEW DELHI - 110001.

Writ petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to

i) issue interim direction to the respondents to accept all pending and future returns of the first petitioner under the Central Goods and Services Tax Act, 2017 and Kerala State Goods and Services Tax Act, 2017 since March 2021 provisionally without insisting on conceding tax liability on distribution of various articles and goods to its own members or for providing facilities to its own members pending disposal of the Writ Petition.

ii) stay all further proceedings as per Exhibits P5, P5(a), P5(b), P5(c) and P5(d) Notices and all consequential proceedings under the Central Goods and Services Tax Act, 2017 and Kerala State Goods and Services Tax Act, 2017 against the petitioners pending disposal of the Writ Petition.

This petition coming on for admission upon perusing the petition and the affidavit filed in support of WP(C) and upon hearing the arguments of M/s.K.M.FIROZ, M.SHAJNA, Advocates for the petitioners, GOVERNMENT PLEADER for R1 to R3, SRI.SREELAL WARRIER, STANDING COUNSEL for R4 to R7 and of ASG OF INDIA for R8, the court passed the following:



BECHU KURIAN THOMAS, J

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W.P.(C) No.20304 of 2021

Dated this the 28th day of September, 2021

ORDER

After hearing the exhaustive arguments of Adv.Firoz K.M., the learned counsel for the petitioner, I am satisfied that the petitioners have made out a *prima facie* case, which merits admission. Accordingly, the writ petition is admitted.

2. Learned Government Pleader takes notice on behalf of respondents 1 to 3, Adv.Sreelal Warriar, learned Standing Counsel takes notice on behalf of respondents 4 to 7 and learned ASGI takes notice on behalf of the 8th respondent.

3. The interim relief sought for by the petitioners is too wide and the same will have the tendency to interdict or control the procedure that the Assessing Officer must adopt. It is not for this Court to control the Assessing Officer that too at the present stage.

However, since the petitioners have raised a *prima facie* case for consideration, the petitioners shall be free to file the returns contemplated under the *Central Goods and Services Tax Act 2017* as well as the *Kerala State Goods and Services Tax Act, 2017* in accordance with law. The filing of returns will be subject to the contentions raised in the present writ petition.

4. The learned counsel for the petitioners also points out that pursuant to Ext.P5, the respondents may proceed to assess the petitioners even without any consideration of the contentions raised in this writ petition and without hearing. It is clarified that the proceedings, if any, initiated pursuant to clause (3) in Ext.P5 series of notices will be subject to the result of the writ petition and the further orders from this Court.

Sd/-
BECHU KURIAN THOMAS,
JUDGE

APPENDIX OF WP(C) 20304/2021

- Exhibit P5** A TRUE COPY OF THE SYSTEM GENERATED NOTICE DATED 4.7.2021 IN FORM GSTR-3A UNDER SECTION 46 FOR NON FILING OF RETURN ISSUED TO THE FIRST PETITIONER FOR MARCH 2020-21.
- Exhibit P5(a)** A TRUE COPY OF THE SYSTEM GENERATED NOTICE DATED 12.7.2021 IN FORM GSTR-3A UNDER SECTION 46 FOR NON FILING OF RETURN ISSUED TO THE FIRST PETITIONER FOR APRIL 2021-22.
- Exhibit P5(b)** A TRUE COPY OF THE SYSTEM GENERATED NOTICE DATED 22.7.2021 IN FORM GSTR-3A UNDER SECTION 46 FOR NON FILING OF RETURN ISSUED TO THE FIRST PETITIONER FOR MAY 2021-22.
- Exhibit P5(c)** A TRUE COPY OF THE SYSTEM GENERATED NOTICE DATED 30.7.2021 IN FORM GSTR-3A UNDER SECTION 46 FOR NON FILING OF RETURN ISSUED TO THE FIRST PETITIONER FOR JUNE 2021-22.
- Exhibit P5(d)** A TRUE COPY OF THE SYSTEM GENERATED NOTICE DATED 27.8.2021 IN FORM GSTR-3A UNDER SECTION 46 FOR NON FILING OF RETURN ISSUED TO THE FIRST PETITIONER FOR JULY 2021-22.

