



2023:KER:75440

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

THURSDAY, THE 30TH DAY OF NOVEMBER 2023 / 9TH AGRAHAYANA, 1945

WP(C) NO. 32408 OF 2023

PETITIONER/S:

SREEVALSAM RESIDENCY, KULANADA, PATHANAMTHITTA
REPRESENTED BY ITS PROPRIETOR - ARUN RAJ PILLAI, PIN - 689503

BY ADVS.K.I.MAYANKUTTY MATHER
S.PARVATHI, KALLIYANI KRISHNA B.

RESPONDENT/S:

- 1 STATE OF KERALA
REPRESENTED BY ADDITIONAL CHIEF SECRETARY (TAXES), ROOM
NO. 396, 1ST FLOOR, NEAR SOUTH CONFERENCE HALL, MAIN BLOCK,
SECRETARIAT, THIRUVANANTHAPURAM GPO, PIN - 695001
- 2 STATE TAX OFFICER, SGST DEPARTMENT, MINI CIVIL STATION P.O,
PATHANAMTHITTA, PIN - 689645
- 3 COMMISSIONER, KERALA STATE GST DEPARTMENT, 9TH FLOOR,
TAX TOWER, KILLIPPALAM, KARAMANA P.O.,
THIRUVANANTHAPURAM, PIN - 695002
- 4 STATE TAX OFFICER (ARREAR RECOVERY)
KERALA STATE GST DEPARTMENT, FINANCIAL COMPLEX, MINI
CIVIL STATION P.O, 3RD FLOOR, PATHANAMTHITTA, PIN - 689645

OTHER PRESENT:

MR MOHAMMED RAFIQ, SPL GOVERNMENT PLEADER; RESHMITA
RAMACHANDRAN-GP

THIS WRIT PETITION (CIVIL) HAVING RESERVED THE COURT ON 30.11.2023,
ALONG WITH WP(C).23185/2022, 30377/2022 AND CONNECTED CASES, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:



W.P.(C) Nos.32408/2023, 23185, 30377, 30383, 32074 and 33099/2022

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

THURSDAY, THE 30TH DAY OF NOVEMBER 2023 / 9TH AGRAHAYANA, 1945

WP(C) NO. 23185 OF 2022

PETITIONER/S:

M/S. SNEHA REGENCY / PARAY VILLAGE COUNTY,
A UNIT OF KOLLENGODE HERITAGE HOTELS & TOURISM PVT. LTD.,
GOVINDAPURAM ROAD, KOLLENGODE, PALAKKAD- 678506
REPRESENTED BY ITS MANAGING DIRECTOR, ANN BENNY.

BY ADVS. HARISANKAR V. MENON
MEERA V.MENON; R.SREEJITH; K.KRISHNA

RESPONDENT/S:

- 1 THE DEPUTY COMMISSIONER OF STATE TAX,
STATE GST DEPARTMENT, SPECIAL CIRCLE, PALAKKAD- 678 001.
 - 2 THE EXCISE COMMISSIONER,
FORT, ATTAKULANGARA P.O., THIRUVANANTHAPURAM-695023
 - 3 STATE OF KERALA,
REPRESENTED BY ITS SECRETARY, TAXES DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM -695001
- MR MOHAMMED RAFIQ, SPL GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING RESERVED THE COURT ON 30.11.2023,
ALONG WITH WP(C).32408/2023 AND CONNECTED CASES, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:



W.P.(C) Nos.32408/2023, 23185, 30377, 30383, 32074 and 33099/2022

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

THURSDAY, THE 30TH DAY OF NOVEMBER 2023 / 9TH AGRAHAYANA, 1945

WP(C) NO. 30377 OF 2022

PETITIONER/S:

M/S HOTEL JEENA AND UDAYA BAR
DANAPADI, HARIPPAD, ALAPPUZHA, REPRESENTED BY IT'S
MANAGING PARTNER, C. DILEEPAN., PIN - 690514

BY ADVS. BOBBY JOHN; VENKIDESWARAN.S

RESPONDENT/S:

- 1 STATE OF KERALA, REPRESENTED BY THE SECRETARY TO GOVERNMENT, TAXES DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM, PIN, PIN - 695001
- 2 THE DEPUTY COMMISSIONER (ASSMT) SGST DEPARTMENT, SPECIAL CIRCLE, ALAPPUZHA, CIVIL STATION, ALAPPUZHA,, PIN - 688001
- 3 THE COMMISSIONER, KERALA STATE GOODS AND SERVICE TAX DEPARTMENT, 9TH FLOOR, TAX TOWER, KILLIPPALAM, KARAMANA P.O., THIRUVANANTHAPURAM, PIN-695 002, PIN - 695002

MR MOHAMMED RAFIQ, SPL GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING RESERVED, THE COURT ON 30.11.2023, ALONG WITH WP(C).32408/2023 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



W.P.(C) Nos.32408/2023, 23185, 30377, 30383, 32074 and 33099/2022

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

THURSDAY, THE 30TH DAY OF NOVEMBER 2023 / 9TH AGRAHAYANA, 1945

WP(C) NO. 30383 OF 2022

PETITIONER/S:

HOTEL ZODIAZ INTERNATIONAL
MAIN ROAD, KADUTHURUTHY, KOTTAYAM - 686604 REPRESENTED
BY IT'S MANAGING PARTNER SRIJOMON JOSEPH

BY ADVS. AJI V.DEV; S.SAJEEVAN; ALAN PRIYADARSHI DEV

RESPONDENT/S:

- 1 STATE TAX OFFICER (WORKS CONTRACT)
STATE GOODS AND SERVICES TAX DEPARTMENT, CIVIL STATION,
KOTTAYAM -, PIN - 686002
- 2 COMMISSIONER OF STATE GOODS & SERVICES
TAX DEPARTMENT, TAX TOWER, KILLIPPALAM, KARAMANA-
P.O, THIRUVANANTHAPURAM-, PIN - 695002
- 3 STATE OF KERALA, REPRESENTED BY ADDITIONAL CHIEF
SECRETARY (TAXES), GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM -, PIN - 695001

MR MOHAMMED RAFIQ, SPL GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING RESERVED, THE COURT ON
30.11.2023, ALONG WITH WP(C).32408/2023 AND CONNECTED CASES, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:



W.P.(C) Nos.32408/2023, 23185, 30377, 30383, 32074 and 33099/2022

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

THURSDAY, THE 30TH DAY OF NOVEMBER 2023 / 9TH AGRAHAYANA, 1945

WP(C) NO. 32074 OF 2022

PETITIONER/S:

SAMS PROPERTY DEVELOPERS AND HOTELS P LTD REPRESENTED BY
ITS MANAGING DIRECTOR SHERITA DSOUZA
WESTWAY HOTEL KANNUR ROAD KOZHIKODE, PIN - 673006

BY ADVS. K.P.ABDUL AZEES
AKHIL SURESH; T.ARCHANA

RESPONDENT/S:

- 1 THE COMMISSIONER
STATE GOODS AND SERVICE TAX DEPARTMENT
THIRUVANANTHAPURAM, PIN - 695001
- 2 STATE OF KERALA REPRESENTED BY SECRETARY TAXES
SECRETARIAT THIRUVANANTHAPURAM, PIN - 695001
- 3 THE DEPUTY COMMISSIONER
SPECIAL CIRCLE II STATE GOODS AND SERVICE TAX DEPARTMENT
KOZHIKODE, PIN - 673006

MR MOHAMMED RAFIQ, SPL GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING RESERVED THE COURT ON 30.11.2023,
ALONG WITH WP(C).32408/2023 AND CONNECTED CASES, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:



W.P.(C) Nos.32408/2023, 23185, 30377, 30383, 32074 and 33099/2022

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

THURSDAY, THE 30TH DAY OF NOVEMBER 2023 / 9TH AGRAHAYANA, 1945

WP(C) NO. 33099 OF 2022

PETITIONER/S:

DAHLIA TOURIST HOME,
PAMPADY, KOTTAYAM, REPRESENTED BY ITS MANAGING PARTNER,
DOMINIC MATHEW., PIN - 686502

BY ADVS.RAHUL A.; S.ANIL KUMAR (TRIVANDRUM)
SABU C.J; M.RAJAGOPAL; APARNA ANIL; G.RISHRAJ

RESPONDENT/S:

- 1 THE DEPUTY COMMISSIONER, STATE GST DEPARTMENT, SPECIAL
CIRCLE, KOTTAYAM DISTRICT., PIN - 688001
- 2 THE STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT, TAXES
DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM., PIN - 695001
- 3 THE COMMISSIONER OF EXCISE
KERALA, THIRUVANANTHAPURAM, PIN - 695033

MR MOHAMMED RAFIQ, SPL GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING RESERVED, THE COURT ON
30.11.2023, ALONG WITH WP(C).32408/2023 AND CONNECTED CASES, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:



W.P.(C) Nos.32408/2023, 23185, 30377, 30383, 32074 and 33099/2022

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J U D G M E N T

[WP(C) Nos.32408/2023, 23185/2022, 30377/2022, 30383/2022, 32074/2022,
33099/2022]

Heard learned Advocates, Mr Mayankutty Mather, Mr Bobby John, Mr Aji V Dev, Mr Rahul A, Mr Harisankar V Menon, Mr K P Abdul Azees and Mr Mohammed Rafiq, learned Special Government Pleader (Taxes) for the parties.

1.1 This batch of writ petitions has been filed impugning the interest liability on the petitioners for the delay in remitting the turnover tax (for short, 'ToT') in respect of the Financial Years 2020-21 and 2021-22. Common questions of facts and law are involved in these writ petitions. Therefore, the facts of the lead petition, being W.P.(C) No.32408/2023, are taken note of for the purposes of comprehending and deciding the controversy involved in these writ petitions.



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Facts in Brief:

W.P.(C) No. 32408/2023

2. The petitioner is a Bar-Attached Hotel (4 Star) having FL3/FL11 licenses to sell Indian Made Foreign Liquor (for short 'IMFL'), including beer and wine, only in loose quantity/ peg measurements within their licensed premises as per the provisions of the Foreign Liquor Rules and the Licenses issued to them.

2.1 The petitioner is a dealer under the provisions of the Kerala General Sales Tax Act, 1963. So far as the sale of sealed bottles from retail outlets is concerned, the State Government has created a monopoly in favour of the Kerala State Beverages Corporation (for short, 'KSBC'). Kerala State Beverages Corporation owns these retail outlets.

2.2 During the year 2020-21, the petitioner filed the annual return disclosing a total turnover of Rs.28,78,94,876/-. The Assessing Authority, however, noticed certain anomalies.



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Hence, a notice dated 11.07.2022 was sent to the petitioner to file a reply and appear for a personal hearing. The petitioner received the notice on 13.07.2022. The petitioner had filed the reply on 22.07.2022 along with the books of accounts. It was noticed that the interest for the period with effect from 22.12.2020 to 31.03.2021 was remitted along with the return, and the interest for the period with effect from 01.04.2020 to 21.12.2020 was not remitted. In view thereof, Ext.P5 order dated 30.07.2022 imposing total tax and interest payable at Rs.22,49,821/- was issued, which is impugned in the writ petition.

3. With the spread of the COVID-19 pandemic, the entire service industry, including hospitality, was badly affected, and restrictions were imposed on the opening of Bar-Attached hotels and Beer and Wine parlours. This situation led to overcrowding of customers in retail outlets in the State, and the apprehension of spreading COVID-19 among more and



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more people was aggravated because of the overcrowding of customers at the retail outlets of the KSBC. The Government, considering the restrictions prevailing during the said period and to reduce overcrowding at retail outlets, permitted parcel sale of liquor in sealed bottles by FL3/FL11 licensees also at printed price on liquor bottles, by Government Order G.O.(MS) No.41/2020/TD dated 18.05.2020 and amended the Foreign Liquor Rules to facilitate such sales from the premises of FL3/FL11 licensees for consumption outside the premises only through virtual queue application that had been created by the KSBC, only till period for which permission was denied for in-house consumption in loose quantity/ peg measurement within the premises of FL3/FL11 licensees. Sales were to be affected only through specifically allotted counters apart from permit rooms.

3.1 The period during which the FL3/FL11 licensees were permitted parcel sales of Indian Made Foreign liquor was



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22.05.2020 to 21.12.2020 and 15.06.2021 to 25.09.2021. Section 5 of the Kerala General Sales Tax Act 1963 (for short, 'KGST Act') provides the tax regime on the purchase and sale of Petroleum products and Indian Made Foreign Liquor *de hors*, the introduction of VAT laws and GST laws in the State. Section 5, the charging section, provides for payment of total turnover tax for the year by the KSBC through its retail outlets as well as FL3/FL11 licensees. For Bar-Attached hotels, the rate of tax is 10%, and for others, the rate is 5% of the total turnover tax at all points of sale. It would be apt to take note of Section 5 of the KGST Act, which is extracted hereunder:

“5. Levy of tax on sale or purchase of goods: - (1) Every dealer (other than a casual trader or agent of a non-resident dealer or the Central Government, or Government of Kerala or the Government of any other state or of any Union Territory, or any local authority) whose total turnover for a year is not less than two lakhs rupees and every casual trader or agent of a non-resident dealer, the Central Government, Government of Kerala, the Government of any other state or



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of any Union Territory, or any local authority whatever be its total turnover for the year in respect of goods included in the Schedule at the rate mentioned against such goods,-

(a) in respect of Petroleum products falling under Sl.No.1of the Schedule, at the point of sale in the State by an oil company liable to tax under this section, except where the sale is by an oil company to another oil company and at the point of first sale in the State by a dealer liable to tax under this section when the sale is not by an oil company.

(b) in respect of Foreign liquor, at the point of sale by the Kerala State Beverages (Manufacturing and Marketing) Corporation Limited and at the point of first sale in the State by a dealer liable to tax under this section except where the sale is to the Kerala State Beverages (Manufacturing and Marketing) Corporation Limited.

(c) In respect of other goods included in the Schedule, at the point of first sale in the State by a dealer liable to tax under this section.

Explanation: - For the purpose of this section -

(a) "Oil Company" means Kochi Refineries Ltd., Indian Oil Corporation Ltd., Hindustan Petroleum Corporation Ltd., Indo-Burma Petroleum Company Ltd., Bharat Petroleum Corporation Ltd and includes such other company as the Government of Kerala may, by notification in the Gazette,



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specify in this behalf.

(b) "Foreign liquor" means and includes wine, brandy, champagne, sherry, rum, gin, whisky, beer, cidar, cocoa brandy and all other distilled or spirituous preparations but shall not include medicines and drugs covered by the Kerala Value Added Tax Act, 2003(30 of 2004).

(2) (i) Notwithstanding anything contained in sub-section (1), every dealer in Foreign Liquor, as specified hereunder, shall pay turnover tax on the turnover of foreign liquor at all points of sale in the State, after making such deductions as may be prescribed , namely:-

(a) by a bar attached hotel, at the rate of ten per cent ;
and

(b) by others at the rate of five per cent, on the turnover at all points of sale.

Explanation I: Any distillery, brewery, winery or other manufactory established under section 14 of Abkari Act 1 of 1077, shall be liable to pay turnover tax on the turnover including any duty or excise leviable on such liquor at the hands of such person, whether such duty is paid by such person or any subsequent dealer as per the provisions in section 18 of the said Act.

Explanation II: For the removal of doubt, it is hereby clarified that any distillery in the State which sells liquor manufactured by it within the State to the Kerala State



Beverages (Manufacturing & Marketing) Corporation shall be liable to pay turnover tax on the turnover of sale of liquor by it to the said Corporation and the turnover for the purpose of this sub-section shall include any duty of excise leviable on such liquor at the hands of such manufacturer whether such duty is paid by the manufacturer or by the said Corporation.

Explanation III: For the purpose of this sub-section bar attached hotel shall mean a hotel, restaurant, club or any other place, which is licensed under the Foreign Liquor Rules, to serve foreign liquor specified under clause (b) of Explanation to sub-section (1).

(ii) Notwithstanding anything contained in sub-section (1) of Section 22, no dealer shall collect from his purchaser the turnover tax payable by him under this sub-section.

(3) Notwithstanding anything contained in sub-section (1), every dealer registered under sub-section (3) of Section 7 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956), shall whatever be the quantum of his total turnover, pay tax on his taxable turnover for that year in respect of the sale of the goods, with reference to the purchase of which he has furnished a declaration under sub-section (4) of Section 8 of the said Central Act.

(4) Notwithstanding anything contained in sub-section (1) but subject to sub-section (5), where goods sold are contained in



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containers or are packed in any packing materials, the rate of tax and the point of levy applicable to such containers or packing materials, as the case may be, shall, whether the price of the containers or the packing materials is charged separately or not be the same as those applicable to goods contained or packed, and in determining the turnover of the goods, the turnover in respect of the containers or packing materials shall be included therein.

(5) Where the sale or purchase of goods contained in any containers or packed in any packing materials is exempt from tax, then, the sale or purchase of such containers or packing materials shall also be exempt from tax.

Explanation:- For the purposes of sub-section (4) and sub-section (5), the word “containers” includes gunny bags, tins, bottles or any other containers.”

3.2 The rate of turnover tax payable by the FL3/FL11 licensees on parcel sales of Indian Made Foreign Liquor for the period 22.05.2020 to 21.12.2020 and 15.06.2021 to 25.09.2021 due to COVID-19 restrictions was not prescribed. However, the same sales from the retail outlets would attract 5% turnover tax. The Federation of Kerala Hotels' Association submitted a



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representation before the Government, requesting for prescribing the ToT rate to make it at parity with the ToT rate payable by the KSBC on their sales through retail outlets. The Government, after considering the representations, issued notification – SRO No.297/2022 dated 26.03.2022 fixing the ToT rate at 5% on parcel sale/retail sale of IMFL conducted through FL3/FL11 licensees in the State under Section 10 of the KGST Act for the limited period as mentioned above when they were permitted to effect parcel sale/ retail sale of IMFL.

3.3 The case of the petitioner is that since the rate of ToT at 5% for parcel sales of IMFL by FL3/FL11 licensees was notified only vide SRO No.297/2022 dated 26.03.2022, most of the dealers, for want of clarity of rate of tax on parcel sale as permitted for limited period by FL3/FL11 licensees did not file return and remit ToT in respect of turnover of parcel sale of IMFL during the said period. The petitioner, during the year 2020-21, had effected parcel sale of IMFL worth the turnover



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of Rs.19,86,27,206/- during the period 22.05.2020 to 21.012.2020 and regular Bar sales of Rs.5,02,42,527/- during the balance period at its Bar hotels at Kulanada and Vembayam.

3.4 It is the further case of the petitioner that the Finance Minister, in his Budget Speech on 11.03.2022 on the floor of the Legislative Assembly, announced the extension of the Amnesty Scheme and to enlarge the time to pay the KGST arrears relating to 2021-22 financial year also and the Cabinet decision was taken by the Government on 23.02.2022 to give enlargement of time to file the return as well as to remit ToT by FL3/FL11 licensees. The petitioner did not file the return as well as remittance of ToT in anticipation of necessary notification for the extension of the time limit for filing the return and remittance of ToT up to 31.03.2022 and 30.04.2022, respectively, in view of the policy decision announced on the floor of the Assembly and the Cabinet decision taken. It is



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further submitted that in the absence of the rate of tax prescribed for the parcel sale by FL3/FL11 licensees, the petitioners were unable to file monthly returns and pay ToT at the rate of 5% on the taxable turnover for the period during which they were authorised to effect parcel sales of IMFL from their premises.

3.5 The 2nd respondent, in the meantime, proposed completion of assessment for the year 2020-21 *vide* Assessment Order dated 30.07.2022 fixed taxable turnover of Rs.23,83,52,647/- in respect of parcel sale of IMFL for the period 22.05.2020 to 21.12.2020 and Rs.5,02,42,527/- in respect of the Bar sale for the remaining period. On the basis of the estimation of the aforesaid turnover, the ToT liability was fixed and the balance amount was demanded with interest. The petitioner had paid the balance ToT payable as shown in Ext.P5 Assessment Order, i.e., Rs.35,325/- except for the interest amount.



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Submissions:

Petitioners':

4. Learned Counsel appearing for the petitioners have submitted that as the rate for effecting parcel sale by FL3/FL11 licensees in view of the Government Order dated 18.05.2020 for the limited period, i.e., 22.05.2020 to 21.12.2020 and 15.06.2021 to 25.09.2021 was not fixed, the petitioners were not aware whether the petitioners were liable to pay 10% turnover tax, which they are liable to pay for the sale of IMFL in loose quantity/ peg measurements, or it would be 5%, which is the applicable rate of parcel on identical sales by the retail outlet of KSBC. The petitioners could not file their returns and did not pay the tax as returns were not accepted at 5% of ToT on parcel sales by the petitioners. Once Ext.P2 SRO was issued fixing ToT at the rate of 5% on 26.03.2022 on parcel sales of IMFL by the FL3/FL11 licensees, the petitioners had paid ToT and filed the return within the extended time limit as per the



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Budget Speech and Cabinet Decision in Exts.P3 and P4, respectively.

4.1 It is, therefore, submitted that when there was no rate of ToT fixed for effecting parcel sale by the FL3/FL11 licensees, they could not have remitted the tax at the rate of 5% as the portal would not have accepted the return and tax at the rate of 5%. Once the tax has been notified, the petitioners have paid the tax without any delay before 30.04.2022. In view of the aforesaid facts, neither the interest nor the penalty are to be levied. It is, therefore, submitted that the interest levied and demanded in respect of the delayed payment of the ToT at the rate of 5% on parcel sale of IMFL by FL3/FL11 licensees is wholly unjustified and liable to be set aside.

4.2 It is further submitted that in the absence of authorisation by Government Order in Ext.P1, the FL3/FL11 licensees could sell liquor in peg measurements, and the rate



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of ToT was 10% on such sales. However, when bottle sales were permitted as per Ext.P1, there was no rate of tax provided for such sales by the FL3/FL11 licensees for a limited period, and when there was no rate of tax provided, the petitioner could not have filed the return and paid the tax. In fact, the rate has been prescribed only by the notification in Ext.P2 dated 26.03.2022.

4.3 The rate of tax is one of the components of valid tax legislation, and in the absence of the rate of tax, the charging provision cannot be said to be a valid provision. Because of the confusion prevailing on bottle sales effected through retail outlets of KSBC, the ToT was 5%, and no separate ToT was provided for parcel sale by FL3/FL11 licensees in pursuance of the Government Order in Ext.P1, the petitioners could not have been expected to file return regarding such sale and pay tax in the absence of a clear notification. Furthermore, it is submitted that the Government itself had taken the decision



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for payment of ToT by the FL3/FL11 licensees up to 30.04.2022 and to file the return up to 31.03.2022 by providing the Amnesty Scheme. Therefore, the demand of interest *vide* Ext.P5 order is wholly unjustified and liable to be quashed in respect of the parcel sales of IMFL by FL3/FL11 licensees during the period 22.05.2020 to 21.12.2020 and 15.06.2021 to 25.09.2021.

The State Government's:

5. Mr Mohammed Rafiq, learned Special Government Pleader (Taxes), appearing for the State, has submitted that *vide* notification in Ext.P2 issued under Section 10 of the KGST Act providing the rate of ToT on parcel sale by Bar-Attached hotels/FL3/FL11 licensees for the period 22.05.2020 to 21.12.2020 and 15.06.2021 to 25.09.2021 at the rate of 5%. However, the notification does not provide for retrospective deduction of the rate applicable under Section 5(2)(i)(a), the Government has also not extended the time for payment of tax



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vide Ext.P2 order, which is prescribed under the provisions of the KGST Act. The Cabinet Decision for extension of time for filing of return and payment of tax has not been clothed with statutory prescription. At best, it was a decision in principle or policy decision which has not been given effect to by issuing a necessary notification.

5.1 The notification Ext.P2 would come into effect from the date of its issuance. Therefore, if the petitioners have not paid the tax on the due date, the petitioners are liable to pay the interest for delayed payment of tax and filing returns. The petitioners were required to pay the turnover tax at the rate of 10% but for the notification issued in Ext.P2. Under the notification, it is provided that the excess tax paid over and above 5% would be refunded to the dealer on parcel sales effected by FL3/FL11 licensees. The petitioners have not paid the tax to the Government, and they had paid with delay for which they are liable to pay the interest. The impugned orders



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do not suffer from illegality and cannot be said to be without jurisdiction.

5.2 It is further submitted that Section 23(3) of the KGST Act provides for the levy of interest from the date on which the tax is due as per the time prescribed in the Act and Rules. Interest is a statutory liability, and a statutory liability can be waived off only under an express provision for waiver in the Statute. Ext.P2 order does not provide for waiving of the interest for delayed payment of ToT by the FL3/FL11 licensees on parcel sale for the period 22.05.2020 to 21.12.2020 and 15.06.2021 to 25.09.2021. It has only reduced the rate applicable for the period 22.05.2020 to 21.12.2020 and 15.06.2021 to 25.09.2021 to 5%. The submission is that since interest, being a statutory liability has not been waived off by statutory prescription, the petitioners are liable to pay the interest as has been demanded in Ext.P5 Assessment Order.



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5.3 Learned Special Government Pleader also submits that the Cabinet Decision, unless and until followed by necessary SRO to implement the said decision, cannot be given effect to by the Court by issuing a writ of mandamus. It comes into effect only when the necessary SRO is issued to give effect to the decision taken by the Cabinet and not otherwise.

5.4 Learned Special Government Pleader has relied on the following decisions in support of his submissions: *Voltas Ltd. v. State of A.P.*¹; *Chandramani Trades v. State of Kerala*²; *JK Synthetics Ltd. Commercial Tax Officer*³; and *State of Kerala v. Western India Cosmetic and Health Products Ltd*⁴.

Discussion:

6. The facts are not much in dispute and the controversy involved is in a narrow compass. The issue which requires consideration is whether the petitioners are liable to

¹ (2004) 11 SCC 569

² (2008) 16 VST 294

³ (1994) 94 STC 422

⁴ 2020 (10) KLT 786 (FB)



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pay the interest for delayed payment of turnover tax on parcel sales of IMFL during the period 22.05.2020 to 21.12.2020 and 15.06.2021 to 25.09.2021, in view of the authorisation given to them by Ext.P1 Government Order. It is not in dispute that, but for the Government Order in Ext.P1, the petitioners would not have been able to effect parcel sales of IMFL for the limited period for which they were authorised, as mentioned above. The tax levied on such sales by the retail outlets of KSBC was at the rate of 5%. The petitioners are liable to pay turnover tax at the rate of 10% on sales effected in peg measurements. However, Ext.P1 notification, which authorises the sale of IMFL by FL3/FL11 licensees, did not provide the rate of tax on such sale. As no rate of tax was provided, the petitioners were unable to file the return for parcel sale for a limited period as the return would not have been accepted without remittance of the tax and the tax at the rate of 5% on taxable turnover of the said parcel sale of IMFL by FL3/FL11 licensees was not



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accepted as software of tax portal was not changed.

6.1 One should be aware of the peculiar situation when the parcel sale was permitted by FL3/FL11 licensees and the circumstances which led to issuing Ext.P1 Government Order permitting such sale, as has been mentioned above. The Finance Minister and the Cabinet were aware of this situation and therefore, the Finance Minister, in his Budget Speech dated 11.03.2022 on the floor of the Assembly, said that the Bar hotels which were closed as per the Government policy and obtained licenses subsequently could not file the return for the relevant period due to software-related issues and later on due to Covid. The COVID-related crises continued, and therefore, the date of filing option could be extended to 31.03.2022, and the payment of arrears should be completed before 30.04.2022. The Cabinet confirmed the decision announced by the Finance Minister in his Budget Speech, and a decision was taken by the Cabinet on 22.02.2022 for the deduction of turnover tax at 5%



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during the lockdown period 22.05.2020 to 21.12.2020 and 15.06.2021 to 25.09.2021 on parcel sale of IMFL by the FL3/FL11 licensees. The deadline for filing the return for outstanding arrears of tax was extended up to 31.03.2022, and the time for clearing all the dues was also allowed till 30.04.2022. The notification in Ext.P2 has been issued on 26.03.2022 to give effect to the Cabinet Decision dated 22.02.2022.

6.2 I am of the view that the said notification has to be given a purposive interpretation. Under the notification dated 26.03.2022 in Ext.P2, the turnover tax under Clause (i)(a) of Subsection (2) of Section 5 of the KGST Act on sale of foreign liquor sold for the period 22.05.2020 to 21.12.2020 and 15.06.2021 to 25.09.2021 by the Bar hotels has been reduced to 5%. Not only this, if some dealer has paid the excess turnover tax for the said period, the same was to be adjusted towards the existing or future liability. The explanatory note attached to the said notification would read as under:



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“Explanatory Note

(This does not form part of the notification, but is intended to indicate its general purport.)

Turnover tax at the rate of ten percent is payable on sale of foreign liquor sold by a bar attached hotel. Whereas, the turnover tax applicable on sale of foreign liquor sold by the Kerala State Beverages Corporation is five percent. During the period from 22nd May, 2020 to 21st December, 2020 and for the period from 15th June, 2021 to 25th September, 2021, bar hotels as well as Kerala State Beverages Corporation were permitted for takeaway only. The Government of Kerala, having considered it necessary in the public interest so to do, decided to reduce turnover tax payable under clause (a) of b-section (2) of section 5 of the Kerala General Sales Tax Act, 1963 (Act 15 of 1963), on sale of foreign liquor sold for the period from 22nd May, 2020 to 21 December, 2020 and for the period from 5th June, 2021 to 25th September, 2021 to five percent to the bar hotels also.

The notification is intended to achieve the above object.”

6.3 The notification itself prescribes that for the said period, the turnover tax would be 5%. Thus, it has been given effect to for the period 22.05.2020 to 21.12.2020 and 15.06.2021 to 25.09.2021. Since the rate has been prescribed for parcel



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sale by the Ext.P2 notification for the said period, the tax paid on the said sale at the rate of 5% on or before 30.04.2022 should be deemed to be within time as per the Cabinet Decision and no interest would be payable on the turnover tax in respect of the said sale up to 30.04.2022. However, if any dealer has paid the tax after 30.04.2022, he would be liable to pay interest and penalty as may be determined by the competent authority.

6.4 Another aspect which has to be taken note of is, for the first time *vide* notification in Ext.P2, the rate of turnover tax has been prescribed on parcel sale by FL3/FL11 licensees, which was effected by them for the limited period as mentioned above; but for the notification in Ext.P1, the FL3/FL11 licensees could not have effected parcel sales, which is the monopoly of the retail outlet of KSBC. For the extraordinary situation, which got created because of the spread of COVID-19, the petitioners were also permitted to effect parcel sales for the period as prescribed by the



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Government. However, the said notification in Ext.P1 did not prescribe the rate of turnover tax on such sales by the FL3/FL11 licensees, though, on similar sales, the turnover tax for the KSBC was 5%, as noted above. The petitioners, since were not effecting peg measurement sales, could not have been expected to remit the turnover tax at the rate of 10% on the parcel sales.

6.5 It is well settled that four components must be present in the levy of tax:

- (i) the character of the imposition known by its nature, which prescribes the taxable event attracting the levy;
- (ii) a clear indication of the person on whom the levy is imposed and who is obliged to pay the tax;
- (iii) the rate at which the tax is imposed; and
- (iv) the measure or value to which the rate will be applied for computing the tax liability.

Any uncertainty or vagueness in the legislative scheme



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defining any of these components could render the levy of tax invalid, as has been held by the Supreme Court in *Govind Saran Ganga Saran v. Commissioner of Sales Tax*⁵.

6.6 From the notification in Ext.P1, though the petitioners were permitted to effect the parcel sales, the rate was not prescribed, and the rate has been prescribed only by the notification in Ext.P2 dated 26.03.2022. I am, therefore, of the considered view that in the absence of the rates prescribed before 26.03.2022, any demand and levy of tax could not have been valid. After the rate of the turnover tax has been prescribed, the petitioners ought to have remitted the tax before 30.04.2022. This demand of interest appears to be wholly unjustified and unsustainable for the alleged delay in paying tax on the taxable turnover of parcel sales by the FL3/FL11 licensee.

⁵ 1985 AIR 1041



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6.7 In one of the cases, the FL3/FL11 licensee has approached the Appellate Authority against such demand of interest. The said licensee, namely, M/s Matha Enterprises (Hills Park), Angamaly, Ernakulam, had challenged the similar demand of interest on late payment of turnover tax at the rate of 5% for the parcel sale effected from 22.05.2020 to 21.12.2020. The Appellate Authority noted the fact that the notification, i.e., SRO 294/2022, is dated 26.03.2022, two years after the end of the related financial year and there were technical issues with the Bar-attached hotels to file monthly returns for the above period with a turnover tax levy at the rate of 5% while the system permitted the remittance only at the rate of 10%. These ambiguities were clarified only by the publication of SRO 297/2022 dated 26.03.2022. The Appellate Authority, i.e., Joint Commissioner (Appeals), in its Order dated 22.12.2022 in Ext.P10 had held the levy of interest would be unjustified and such demand would be against the equity and in violation of



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the principles of natural justice. The Appellate Authority had ordered for deletion of demand of interest for belated payments of turnover tax at the rate of 5% in the disputed assessment order and it has been held that no interest is leviable if the payment of turnover tax at the rate of 5% was made up to 26.04.2022, i.e., one month after the date of notification SRO 297/2022 dated 26.03.2022. However, if the payment has been made after 26.04.2022, the same would attract the interest from 27.04.2022 for the rest of the financial year. This Order passed by the Joint Commissioner (Appeals) has been challenged, but no final decision has been taken.

6.8 The judgment relied on by the Special Government Pleader in *Voltas Ltd* (supra) is not applicable to the facts of the present case. There was no such decision by the Cabinet to extend the time for filing the return and payment of the tax, as in the present case, and the said decision was taken due to the difficult time and there being no rate prescribed for



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payment of tax on parcel sale by FL3/FL11 licensees for a limited period due to Covid-19. Therefore, the *Voltas Ltd* judgment and other judgments are distinguishable.

Result:

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7. In view thereof, the writ petitions are allowed with the following observations:

(i) In cases where the returns are filed by 31.03.2022, and ToT was cleared on or before 30.04.2022, the FL3/FL11 licensees are not liable to pay interest for delayed payment of the turnover tax for the period 22.05.2020 to 21.12.2020 and 15.06.2021 to 25.09.2021 in Financial Years 2020-21 and 2021-22.

(ii) If any FL3/FL11 licensees did not file the return of ToT in respect of the taxable turnover of the parcel sales of IMFL for the period of authorised sale on or before 31.03.2022 and not



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paid the ToT at 5% by 30.04.2022, such a licensee/dealer would be liable to pay interest for delayed payment of ToT with effect from 01.05.2022 till the date of payment and for delay in filing returns.

(iii) In all these cases, the impugned orders are quashed, and the cases are remitted back to the Assessing Authority to pass fresh Assessment Orders as per the (i) and (ii) mentioned above.

All Interlocutory Applications as regards interim matters stand closed.

Sd/-

DINESH KUMAR SINGH

JUDGE

jjj



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APPENDIX OF WP(C) 23185/2022

PETITIONER EXHIBITS

- | | |
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| Exhibit P1 | COPY OF G.O. (MS) NO. 43/2020/TD ISSUED BY THE 2ND RESPONDENT DTD. 22-05-2020 |
| Exhibit P2 | COPY OF LETTER ISSUED BY THE 2ND RESPONDENT DTD. 26-05-2020 |
| Exhibit P3 | COPY OF SRO NO. 325/2020 ISSUED BY GOVERNMENT OF KERALA DTD. 14-05-2020 |
| Exhibit P4 | COPY OF NOTICE FOR JUNE 2020 ISSUED BY THE 1ST RESPONDENT DTD. 19-10-2020 |
| Exhibit P5 | COPY OF NOTICE FOR JULY 2020 ISSUED BY THE 1ST RESPONDENT DTD. 19-10-2020 |
| Exhibit P6 | COPY OF NOTICE FOR AUGUST 2020 ISSUED BY THE 1ST RESPONDENT DTD. 19-10-2020 |
| Exhibit P7 | COPY OF OBJECTION FOR JUNE 2020 FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT DTD. 10-11-2020 |
| Exhibit P8 | COPY OF OBJECTION FOR JULY 2020 FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT DTD. 10-11-2020 |
| Exhibit P9 | COPY OF OBJECTION FOR AUGUST 2020 FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT DTD. 10-11-2020 |
| Exhibit P10 | COPY OF JUDGMENT IN WP (C) NO. 24827/2020 (C) OF THIS HON'BLE COURT DTD. 13-11-2020 |



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| Exhibit P11 | COPY OF SRO NO. 297/2022 ISSUED BY THE 3RD RESPONDENT DTD. 26-03-2022 |
| Exhibit P12 | COPY OF NOTICE ISSUED BY THE 1ST RESPONDENT DTD. 07-07-2021 |
| Exhibit P13 | COPY OF REPLY FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT DTD. 30-07-2021 |
| Exhibit P14 | COPY OF NOTICE ISSUED BY THE 1ST RESPONDENT DTD. 20-06-2022 |
| Exhibit15 | COPY OF NOTICE ISSUED BY THE 1ST RESPONDENT DTD. 07-07-2022 |



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APPENDIX OF WP(C) 30377/2022

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE NOTICE DATED 03.05.2022, ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER
- Exhibit P2 TRUE COPY OF THE REPLY, DATED 12.05.2022, SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT ON 18.05.2022,
- Exhibit P3 TRUE COPY OF THE ASSESSMENT ORDER DATED 04.06.2022, FOR THE YEAR 2020-21,
- Exhibit P4 TRUE COPY OF THE RELEVANT EXTRACT OF THE BUDGET SPEECH 2022-23 BY THE FINANCE MINISTER, GOVERNMENT OF KERALA
- Exhibit P5 TRUE COPY OF THE RELEVANT EXTRACTS OF THE CABINET DECISION DATED 23.02.2022 OF THE GOVERNMENT OF KERALA AS PUBLISHED IN INFORMATION AND PUBLIC RELATION DEPARTMENT WEBSITE
- Exhibit P6 TRUE COPY THE INTERIM ORDER PASSED BY THIS HON'BLE COURT IN W.P.(C) NO.25820 OF 2022 I



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APPENDIX OF WP(C) 30383/2022

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE GOVERNMENT ORDER NO. GO (MS) 41/2020/TAXES DATED 18.5.2020
- Exhibit P2 TRUE COPY OF THE GOVERNMENT ORDER NO. SRO. 297/2022 DATED: 26.03.2022
- Exhibit P3 TRUE COPY OF THE NOTIFICATION NO. SRO 67/2022 DATED 17.01.2022
- Exhibit P4 TRUE COPY OF THE ASSESSMENT ORDER PASSED FOR THE YEAR 2020-21 DATED: 19.08.2022
- Exhibit P5 TRUE EXTRACT OF THE BUDGET SPEECH, KERALA FOR 2022 DATED 11-3-2022
- Exhibit P6 TRUE EXTRACT OF THE CABINET DECISION TAKEN ON 23.02.2022
- Exhibit P7 TRUE COPY OF THE CIRCULAR NO.4/2022 ISSUED BY THE COMMISSIONER, STATE TAX DATED 25.3.2022
- Exhibit P7(a) TRUE COPY OF THE CIRCULAR NO.5/2022 ISSUED BY THE COMMISSIONER, STATE TAX DATED 25.3.2022



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APPENDIX OF WP(C) 32074/2022

PETITIONER EXHIBITS

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| Exhibit P1 | THE TRUE COPY OF NOTIFICATION UNDER SRO NO 297/2022 DATED 26/03/2022 |
| Exhibit P2 | THE TRUE COPY OF THE ORDER NO 32110769902/2020-21 DATED 16/08/2022 |
| Exhibit P3 | THE TRUE COPY OF HON'BLE SUPREME COURT ORDER IN SUO MOTU WRIT PETITION (CIVIL) NO 3/2020 DATED 23/03/2020 |
| Exhibit P4 | THE TRUE COPY OF THE INTERIM ORDER IN WRIT PETITION NO 24796/2022 DATED 08/08/2022 |



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APPENDIX OF WP(C) 33099/2022

PETITIONER EXHIBITS

- Exhibit P1 COPY OF THE G.O. (MS) NO: 41/2020/TAXES PERMITTING PARCEL SALES DATED 18-05-2020.
- Exhibit P2 COPY OF G.O. (M.S) NO.43/2020/TAXES DATED 22-05-2020 ISSUED BY GOVERNMENT.
- Exhibit P3 COPY OF THE LETTER DATED 26-05-2020 ISSUED BY THE 3RD RESPONDENT.
- Exhibit P4 COPY OF SRO NO.297/2022 DATED 26-03-2022 (G.O.(P) NO.26/2022/TAXES).
- Exhibit P5 COPY OF THE RELEVANT EXTRACT OF THE CABINET DECISION TAKEN ON 23-02-2022 DOWNLOADED FROM THE WEBSITE OF THE PUBLIC RELATIONS DEPARTMENT OF THE GOVERNMENT OF KERALA.
- Exhibit P6 A COPY OF THE ASSESSMENT ORDER DATED 17-08-2022 ISSUED BY THE 1ST RESPONDENT
- Exhibit P7 A COPY OF THE ORDER DATED 02-09-2022 OF THIS HON'BLE COURT IN W.P. (C) NO.28802 OF 2022



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APPENDIX OF WP(C) 32408/2023

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE GOVERNMENT ORDER GO(MS) NO. 41/2020 TD DATED 18.05.2020 ALONG WITH ENGLISH TRANSLATION.
- Exhibit P2 TRUE COPY OF THE SRO NO. 297/2022 (G.O.(P) NO. 26/2022/TAXES) DATED 26.03.2022.
- Exhibit P3 TRUE COPY OF THE RELEVANT EXTRACT OF THE BUDGET SPEECH OF THE FINANCE MINISTER OF THE STATE DATED 11.03.2022.
- Exhibit P4 TRUE COPY OF THE RELEVANT EXTRACT OF THE CABINET DECISION DATED 23.02.2022 ALONG WITH ENGLISH TRANSLATION.
- Exhibit P5 TRUE COPY OF THE ASSESSMENT ORDER FOR AY-2020-21 DATED 30.07.2022
- Exhibit P5(a) TRUE COPY OF THE ONLINE PAYMENT CHALLAN DATED 29.09.2023
- Exhibit P6 TRUE COPY OF THE REVENUE RECOVERY NOTICE DATED 15.09.2023
- Exhibit P7 TRUE COPY OF THE INTERIM ORDER IN W.P. (C) NO. 24796/2022 OF THIS HON'BLE COURT DATED 08.08.2022
- Exhibit P8 TRUE COPY OF THE INTERIM ORDER IN W.P. (C) NO. 1639/2023 OF THIS HON'BLE COURT DATED 2.3.2023
- Exhibit P9 TRUE COPY OF THE ORDER OF THE INTERIM ORDER IN W.P. (C) NO. 29365/2023 OF THIS HON'BLE COURT DATED 14.9.2023
- Exhibit P10 TRUE COPY OF THE ORDER OF THE JOINT COMMISSIONER (APPEALS) I, SGST DEPARTMENT, ERNAKULAM DATED 22.12.2022 IN STA NO. 74/2022