IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

TUESDAY, THE 23RD DAY OF JUNE 2015/2ND ASHADHA, 1937

OP.No. 9092 of 2003 (G)

PETITIONER :

S. SANTHOSH,
PROPRIETOR, MIDHUNA RESTAURANT,
ENATHU, PATHANAMTHITTA DISTRICT.

BY SENIOR ADVOCATE SRI.C.C.THOMAS

RESPONDENT(S) :
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1. STATE OF KERALA,
   REPRESENTED BY SECRETARY, TAXES (A) DEPARTMENT
   GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

2. THE COMMISSIONER OF EXCISE,
   EXCISE COMMISSIONERATE, THIRUVANANTHAPURAM.

3. THE ASST. EXCISE COMMISSIONER,
   PATHANAMTHITTA.

4. THE CIRCLE INSPECTOR OF EXCISE,
   ADOOR, PATHANAMTHITTA DISTRICT.

R1 TO R4 BY GOVT. PLEADER SRI. P.M. SANEER

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 23-06-2015, ALONG WITH OP NO. 9675/2003 & CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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...2/-

OP.No. 9092 of 2003 (G)

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1 : PHOTOCOPY OF THE JUDGMENT DATED 2.8.2002 IN OP NO. 22062/2002 OF THIS HON'BLE COURT.

EXT.P2 PHOTOCOPY OF THE LETTER DATED 19.11.2002 ISSUED BY THE IST RESPONDENT TO THE PETITIONER.

EXT.P3 PHOTOCOPY OF THE LETTER DATED 5.2.2003 SENT TO THE 1ST RESPONDENT.

EXT.P4 PHOTOCOPY OF THE ORDERS NO. G.O.(RT) NO. 93/2003/TD DATED 10.2.2003 PASSED BY THE 1ST RESPONDENT.

EXT.P5 PHOTOCOPY OF THE LETTER DATED 18.2.2003 SENT BY THE 2ND RESPONDENT TO THE 3RD RESPONDENT.

EXT.P6 PHOTOCOPY OF THE JUDGMENT DATED 21.2.2003 IN CCC NO.1022/2002 OF THIS HON'BLE COURT.

EXT.P7 PHOTOCOPY OF THE FIRST AND LAST PAGES OF THE LICENSE NO. PTA.16/2002-03 ISSUED BY THE 2ND RESPONDENT DATED 25.2.2003.

RESPONDENT'S EXHIBITS : NIL

//TRUE COPY//

P.S. TO JUDGE

Mn

P.R. RAMACHANDRA MENON
&
BABU MATHEW P. JOSEPH, JJ.

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O.P.Nos.9092, 9675, 10010, 10088, 10281, 10383, 10491, & 10578 OF 2003, W.P.(C). No.19361 OF 2003 & W.A.NO.2311 OF 2005

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Dated this the 23rd June, 2015

<u>J U D G M E N T</u>

<u>P.R. Ramachandra Menon, J:</u>

The basic issue involved is whether the licencees who have been given FL3 Licence under the relevant provisions of the Abkari Act /Foreign Liquor Rules are required to satisfy the entire KIST amount for the year in question by virtue of Rule 14 of the Rules or whether they are entitled to have proportionate remission in this regard.

2. The main contention is that in ***<u>Jayadevan and others vs. Board of Revenue</u>*** (**1999 (1)KLJ 87**) it has been held that the parties are entitled to have remission to the proportionate extent. But subsequently, a contrary view was taken by another Bench in **W.A.No.910 of 2000 (State of Kerala vs. Chitra)**. Met with the circumstance, as divergent

views were available, when the issue came up for consideration before another Bench of this Court on 13.10.2006, the necessity to have the matter to be referred to the Full Bench was considered and it was ordered accordingly. W.A.No.2311 of 2005 was filed challenging O.P. 3217 of 2000, whereby the claim putforth by the parties concerned to have pro-rata remission was accepted. All the matters were considered by the Full Bench on 20.12.2006. Reference was also made to Rule 14 of Foreign Liquor Rules. Apparently, the Full Bench found that in so far as Rule 14 of the Foreign Liquor Rules was in existence, the claim of the aggrieved parties could not have been positively entertained, unless there was a challenge against the said rules and the same was answered in their favour. It was accordingly, an opportunity was given to the parties to amend the petitions and the matters were ordered to be listed before the Division Bench for completing the pleadings in this regard.

3. Mr. C.C. Thomas, the learned Sr. Counsel appearing for the parties concerned submits that necessary pleadings have

been raised challenging the vires of the rules. It is also pointed out that the writ petition filed subsequently have been moulded in such a manner challenging the vires of the Rule 14.

4. It is also brought to the notice of this Court that the issue involved in all these cases have already been taken up before the Apex Court where it is pending by way of Civil Appeal No.2246 of 2006 and the outcome of the said case will naturally decide the fate of the parties in these case as well. It is stated that the matter pending before the Apex Court have already been brought up for hearing. The learned Counsel also points out that in the course of subsequent developments the aggrieved parties have already satisfied the entire KIST payable for the concerned year. This being the position, the only question is with regard to right to have refund based on the proportionate remission, if the case projected by the aggrieved parties comes to be accepted, deciding the issue in their favour by the Apex Court.

In the above circumstance, all these cases are disposed of without prejudice to the rights and liberties of the parties to the proceedings to claim for refund, if the issue pending consideration before the Apex Court in Civil Appeal No.2246 of 2006 comes to be decided in their favour holding that the parties concerned are supposed to satisfy only such pro-rata remission. On such an event, it will be open for the aggrieved parties to move the competent authority claiming refund. The rights and liberties in this regard stand saved and protected. The challenge raised with regard to vires of the provision is left open to be agitated in the due course, if so necessitated.

P.R. RAMACHANDRA MENON,
JUDGE.

BABU MATHEW P. JOSEPH,
JUDGE.

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