

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

WEDNESDAY, THE 4TH DAY OF NOVEMBER 2015/13TH KARTHIKA, 1937

WP(C).No. 9012 of 2012 (B)

PETITIONER:

M/S.YESAR REGENCY, KARIMUGAL,
ERNAKULAM DISTRICT REP. BY ITS
MANAGING PARTNER, C.K.SHAJI,
AGED 43 YEARS. S/O. KURUVILLA.

BY ADVS.SRI.M.G.KARTHIKEYAN
SRI.NIREESH MATHEW

RESPONDENTS:

1. STATE OF KERALA REP. BY SECRETARY,
TAXES (A) DEPARTMENT, GOVT.SECRETARIAT,
THIRUVANANTHAPURAM-695 001.
2. THE EXCISE COMMISSIONER,
COMMISSIONERATE OF EXCISE,
THIRUVANANTHAPURAM-695 001.
3. THE DEPUTY COMMISSIONER OF EXCISE,
ERNAKULAM, OPP. SARITHA THEATRE, KOCHI-682 018.
4. THE CIRCLE INSPECTOR OF EXCISE
(KUNNATHUNADU), PERUMBAVOOR
ERNAKULAM DISTRICT-682 038.

BY GOVERNMENT PLEADER SRI.P.P.PADMALAYAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
04-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WPC 9012/2012

PETITIONER'S EXHIBITS:

EXT.P1 : PHOTOCOPY OF THE ORDER NO.XC6-27810/2011 DATED 30.3.2012
PASSED BY THE 2ND RESPONDENT.

EXT.P2 : PHOTOCOPY OF THE CHALAN EVIDENCING THE PAYMENT OF
RS.4,00,000/- ON 31.3.2012.

EXT.P3 : PHOTOCOPY OF THE FL-11 LICENSE NO.21/11-12 DATED 31.3.2012
ISSUED BY THE EXCISE COMMISSIONER.

RESPONDENT'S EXHIBITS: NIL.

/TRUE COPY/

P.S. TO JUDGE

Dama Seshadri Naidu, J.

W.P.(C)No.9012 of 2012 B

Dated this the 4th day of November, 2015

JUDGMENT

The petitioner, a three-star hotel, initially applied for FL-11 licence. After much litigation, the authorities passed an order of sanction on 30.03.2012, in response to which the petitioner paid the licence fee on 31.03.2012. Though the licence was for the abkari year 2011-12, the petitioner could secure the licence only on the last date of the said abkari year.

2. It is the specific contention of the learned counsel for the petitioner that though the order of licence reflects the date 31.03.2012, it was actually received by the petitioner on 02.04.2012, the intervening 1st April, 2012 being a holiday. In sum and substance, the learned counsel has submitted that for the entire abkari year 2011-12,

despite his depositing the licence fee, the petitioner has not used the licence even for one single day.

3. The learned counsel, drawing my attention to the judgment of the Hon'ble Supreme Court in **Chitra v. State of Kerala** (2015 (3) KLT 956 (SC)), has contended that the petitioner is entitled to the benefit of remission of the entire licence fee paid for the year 2011-12.

In the light of the ratio laid down by the Hon'ble Supreme Court in Chira (supra) and also in the light of the disposal of W.P.(C)No.13340/2012 and batch through judgment dated 04.11.2015, this Court disposes of the present writ petition as well, applying the same ratio.

At this juncture, the learned counsel for the petitioner has submitted that since the petitioner still holds FL-11 licence, the authorities may either refund or adjust the amount towards FL-11 licence fee to be paid by the petitioner in future.

Consequently, this Court directs the first and second respondents to give the benefit of remission to the petitioner and either refund the licence fee as expeditiously possible, at any rate, within eight weeks, with interest at 6% per annum as has been fixed by the Hon'ble Supreme Court in Chitra (supra) or, in the alternative, to adjust the said amount towards the future licence fee to be paid by the petitioner. No order as to costs.

Dama Seshadri Naidu, Judge

tkv