IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

TUESDAY, THE 31ST DAY OF MARCH 2015 / 10TH CHAITHRA, 1937

WP(C).No.10464 of 2015 (G)

PETITIONER:

M/S. AMRUT DISTILLERIES LTD.,
CHULLIMADA, PAMPAMPALLAM,
PALAKKAD DISTRICT - 678 621,
REPRESENTED BY ITS GENERAL MANAGER (P & A)
MR.AMBILI AMBAT.

BY ADV. SRI.RAJU K.MATHEWS

RESPONDENTS:

1 STATE OF KERALA,
REPRESENTED BY ITS SECRETARY TO GOVERNMENT,
TAXES DEPARTMENT, SECRETARIAT, TRIVANDRUM - 695 001.

2 THE COMMISSIONER OF EXCISE,
TRIVANDRUM - 695 001.

3 THE DEPUTY COMMISSIONER OF EXCISE,
PALAKKAD - 678 621.

4 THE INSPECTOR OF EXCISE,
AMRUT DISTILLERIES LTD., CHULLIMADA, PAMPAMPALLAM,
PALAKKAD DISTRICT - 678 621.

BY SENIOR GOVERNMENT PLEADER SMT.C.K.SHERIN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 31.03.2015. THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**CR**

# JUDGMENT

Briefly stated, the petitioner holds a licence under the Kerala Abkari Act and Rules made thereunder for the manufacturing of IMFL. It is clear that the State also has deployed certain staff belonging to its Excise Department at the petitioner's unit with a view to safeguarding its revenue interest. In terms of Section 14 (e) of the Kerala Abkari Act, the State recovers the cost of such tax from the licensee. Though it had originally been levied at 25% of the average of the scale of pay applicable, through Exhibit P3 it was revised, holding that under Rule 146 of part I KSR 25% of the maximum of scale of pay had to be recovered.

2. When the revision of levy had been challenged, this Court through Exhibit P4 judgment held that the licensee was liable to pay leave salary and pension contribution only at 25% of the average scale of pay. This Court has also further directed the respondents to calculate the excess amounts collected and adjust it against the future liability.

3. When the petitioner sought the benefit of Exhibit P4 judgment, the fourth respondent through Exhibit P8 order has taken a stand that the judgments in Exhibits P4 and P5 apply only to those parties to the said proceedings and since the petitioner has not been a party, it cannot take advantage of it. Aggrieved thereby, the petitioner has filed the present writ petition.

4. Heard the learned counsel for the petitioner and the learned Government Pleader for the respondents, apart from perusing the record.

5. As could be seen from the record, initially the issue presently in question arose in W.P. (C) No. 23356/2005, which was allowed by a learned single Judge of this Court. No appeal has been filed against the said judgment. Later, when another learned single Judge allowed W.P. (C) No. 21051/2005, through a judgment dated 11.11.2011, the State chose to lay challenge against it in an intra-court appeal. Eventually, a learned Division Bench of this Court through Exhibit P4 judgment upheld the judgment in W.P. (C) No. 23356/2005. It has inter alia observed thus:

> "The learned Government Pleader frankly admits that, the State has not filed any appeal against the judgment in W.P. (C) No. 23356/2005.

The facts of both cases are exactly identical. That being so, the appellant is also entitled to the reliefs granted in that judgment. Accordingly, the appeal is allowed and the judgment of the learned single Judge is set aside. Exhibits P3 and P4 are quashed. It is declared that the appellant is liable to pay as cost of establishment under Rule 16 (4) only the actual amount paid by the State to the officers deputed to the appellant's establishment, by way of pay and leave salary contribution and no other amount. The appellant is not liable to pay cost of establishment at the rate of 25% on the maximum of the scale of pay applicable to the officers so deputed. The appellant is also not liable to pay the amount as contemplated in Rule 146 of Part I KSR except the actual amount paid by the State to the officers, who have been deputed to the appellant's establishment. Accordingly, there would be a direction to the respondents to recalculate the amounts due from the appellant to the respondents in accordance with these findings for the periods in question. If the appellant has paid amounts in excess of the amounts calculated as directed above for the periods in question, the same shall be suitably adjusted towards amounts payable by the appellant presently or in future. Orders in implementation of the above directions shall be passed by the competent among the respondents within two months from the date of receipt of a copy of this judgment.”

6. The learned Government Pleader has, in my view, fairly submitted that the petitioner is similarly situated and that the benefit of Exhibit P4 judgment may have to be extended to him. The learned Government Pleader has also brought to my notice Exhibit P5, whereby the second respondent directed the third respondent, as well as all other Deputy Commissioners, to abide by the judgments referred to above and accordingly consider any individual claim of a licensee.

7. Indeed there is sufficient force in the contention of the learned counsel for the petitioner that once a dictum has been laid by this Court, any other person who is similarly situated can take advantage of it. He cannot be compelled to approach the Court inviting the self-same order once again, which is nothing but duplication of judicial work.

8. It may be appropriate to observe that when a Court of record decides a matter, it not only resolves the issue inter-parties, but also lays down the judicial dictum that has to govern the conduct of all persons concerned, be it the Government or a private suitor. As such, despite the fact that a particular judgment is not in rem, the principle thus decided in any lis squarely applies to

similarly placed persons under all situations. More particularly, in a public law remedy the State or its instrumentality being a party, the decision, to which it is a party, has an element of estoppel, apart from having precedential value, if not res judicata, per se.

9. Under the above circumstances, Exhibit P8 cannot be sustained and is accordingly set aside. Consequentially, the fourth respondent is directed to recalculate the amounts due from the petitioner to the respondents in accordance with the findings contained in Exhibit P4 judgment of this Court, thereby calculating the leave salary and pension contribution payable by the petitioner in respect of the staff of the Excise Department deployed at the petitioner's unit, at 25% of the average of the salary payable to them, and suitably adjust the excess amount collected from the petitioner for the period from 1.4.2000 till date, towards amounts payable by the petitioner presently or in future.

With the above observations, this writ petition is disposed of. No order as to costs.

**Sd/-**

**DAMA SESHADRI NAIDU**

**JUDGE**

DMR/-

The expression **'pay'** is incorporated before the expression **'the leave salary and pension contribution payable by the petitioner'** in paragraph 9 of the judgment dated 31.03.2015 in W.P.(c).10464/2015 as per order dated 11.12.2018 in I.A.1/2018.

Sd/-

**JOINT REGISTRAR**

# APPENDIX

**PETITIONER'S EXHIBITS:**

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|---|---|
| **EXHIBIT P1** | **A TRUE COPY OF THE ORDER NO.XC3-6600/99 DATED 21.06.1999 OF THE 2ND RESPONDENT.** |
| **EXHIBIT P2** | **A TRUE COPY OF ORDER NO.XFB3-16496/02/FIN. DATED 17.08.2002 OF THE 2ND RESPONDENT.** |
| **EXHIBIT P3** | **A TRUE COPY OF THE ORDER NO.XE1-1614/2005 DATED 23.05.2005 OF THE 2ND RESPONDENT.** |
| **EXHIBIT P4** | **A TRUE COPY OF JUDGMENT DATED 31.07.2013 IN WA NO.63/2012.** |
| **EXHIBIT P5** | **A TRUE COPY OF THE ORDER NO.XC3-2640/12 DATED 19.12.2013 OF THE 2ND RESPONDENT.** |
| **EXHIBIT P6** | **A TRUE COPY OF THE REPRESENTATION DATED 10.01.2014, SUBMITTED TO THE 4TH RESPONDENT.** |
| **EXHIBIT P7** | **A TRUE COPY OF THE REPRESENTATION DATED 29.12.2014, SUBMITTED TO THE 4TH RESPONDENT.** |
| **EXHIBIT P8** | **A TRUE COPY OF THE ORDER NO.AD/1/15 DATED 11.03.2015 OF THE 4TH RESPONDENT.** |

**RESPONDENTS' EXHIBITS:** **NIL.**

**// TRUE COPY //**

**P.A. TO JUDGE**

**DMR/-**