IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

TUESDAY, THE 13TH DAY OF JANUARY 2015/23RD POUSHA, 1936

WP(C).No.24891 of 2010 (J)

PETITIONER'S:

1. **N.S.LENIN,AGED 48 YEARS,S/O.SUBRAMANIAN (LATE), NADUVILEPARAMBIL HOUSE,KOTTAMURI.P.O, THRISSUR DISTRICT.**

2. **M.S.SANJAYAKUMAR,S/O.SUBRAMANIAN (LATE), MONATHOTTATHIL HOUSE,PARIYARAM.P.O, THRISSUR DISTRICT.**

3. **T.R.PRAJEESH,S/O.T.K.RAJAN,THYYIL HOUSE, KUZHIKKATTUSSERY.P.O,THRISSUR DISTRICT.**

4. **P.S.SANTHOSHKUMAR,S/O.SUDHEENDRAN, PONATHIL HOUSE,EDATHURUTHY P.O., THRISSUR DISTRICT.**

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

RESPONDENT'S:

1. **STATE OF KERALA,REP.BY SECRETARY, TAXES (A) DEPARTMENT,GOVT.SECRETARIAT, THIRUVANANTHAPURAM.**

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

3. **THE DEPUTY COMMISSIONER OF EXCISE, THRISSUR.**

4. **THE CIRCLE INSPECTOR OF EXCISE, IRINJALAKUDA,THRISSUR DISTRICT.**

5. **THE DISTRICT COLLECTOR,THRISSUR.**

R1-R5 BY SENIOR GOVT. PLEADER SRI.SOJAN JAMES

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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W.P(C) NO.24891/2010

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1:PHOTOCOPY OF THE LICENSE NO.645/02-03 IN RESPECT OF TODDY SHOP NO.51/2002-03 ISSUED BY THE ASST.EXCISE COMMISSIONER, THRISSUR,DATED 24.1.2003.

EXT.P2:PHOTOCOPY OF THE ORDER,GO(RT)NO.267/03/TD DATED 19.4.2003 PASSED BY THE GOVT. OF KERALA.

EXT.P3:PHOTOCOPY OF THE NOTIFICATION GO(P) NO.34/2005/TD DATED 23.3.2005 ISSUED BY THE GOVT. OF KERALA.

EXT.P4:PHOTOCOPY OF THE NOTIFICATION ,G.O(P) NO.36/2006/TD DATED 18.3.2006 ISSUED BY THE GOVT. OF KERALA.

EXT.P5:PHOTOCOPY OF THE NOTICE NO.R6-1214/08 DATED 22.3.2008 ISSUED BY THE ASST.EXCISE COMMISSIONER,THRISSUR.

EXT.P6:PHOTOCOPY OF THE INTERIM ORDER DATED 25.3.2008 IN WP(C) NO.10042/2008 PASSED BY THIS HONOURABLE COURT.

EXT.P7:PHOTOCOPY OF THE JUDGMENT DATED 2.4.2009 IN WP(C) NO.10042/2008 PASSED BY THIS HONOURABLE COURT.

EXT.P8:PHOTOCOPY OF THE JUDGMENT DATED 30.3.2009 IN WP(C) NO.9943/2009 PASSED BY THIS HONOURABLE COURT.

RESPONDENT'S EXHIBITS:

ANNEX R4(a):A TRUE COPY OF THE ABKARI POLICY FOR THE YEAR 2005-06.

ANNEX R4(b):A TRUE COPY OF GO(RT)243/05/TD DATED 27.4.2005.

ANNEX R4(c):A TRUE COPY OF GO(P) NO.44/2005/TD DATED 31.3.2005.

//TRUE COPY//

P.S. TO JUDGE

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C.K.ABDUL REHIM, J

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W.P.(C). No. 24891 OF 2010

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Dated this the 13th day of January, 2015

JUDGMENT

Issue relates to payment of 'Tree Tax' with respect to Toddy Shop Nos.1-59 of Chalakkudy Excise Range. During the year 2002-2003 the privilege for vending toddy in the above said shops was assigned to a committee of employees working in the Toddy Shops, at a nominal rental amount of Rs.500/- for each of the shops. The privilege was assigned to the 'committee of workers' based on the reason that there was no bidders for taking the license for conduct of the shops in question. The license granted with respect to the year 2002-2003 was subsequently renewed periodically up to the year 2005-2006. While assigning the privilege on the basis of Ext.P1 license, a decision was taken to exempt the 'committee of workers' from various liabilities, including payment of 'Tree Tax', deposit of welfare fund contribution and deposit of 3 months advance wages for the employees etc. Ext.P1 is the license issued in this regard, with respect to one of the shops, viz., TS No.51. Ext.P2 Government Order would indicate that the Government have taken a decision to exempt the committees constituted with representatives of the employees of the Toddy Shops from payment of the 'Tree Tax' and advance payment of Welfare Fund Contributions of the workers for the years 2002-2003 and 2003-2004. The names of the members of the committee of workers were specifically mentioned in Ext.P1 license. Ext.P1 would indicate that originally there were 7 workers, in favour of whom the license was granted. But the endorsement contained on the last page of Ext.P1 license would reveal that the renewal of the license was granted up to 31.3.2006, in the name of 7 persons and subsequently it was again renewed up to 31.3.2007 as per the decision taken by the Government, dated 18.3.2006. The 4 petitioners herein are the members in favour of whom the license was renewed during the years 2005-2006 and 2006-2007.

2. Exts.P3 and P4 are the policies declared by the Government during the year 2005-2006 with respect to

disposal of the Abkari Shops and Toddy Shops. Both the above said Government Orders contain a clause that those Toddy Shops which were run by a committee of employees during the year 2004-2005 will be renewed in favour of the same committee of employees. It further provides that if the employees are not willing to run the shop it will be put on sale at the rent fixed for previous 3 years of 2002-2003 to 2005-2006, which ever is higher. Proviso to above clause incorporated in Ext.P4 would specifically indicate that, licensees who have obtained relaxation with respect to payment of 'Tree Tax' need not furnish the proof when the licenses are renewed. According to the petitioners, based on the renewal granted subject to conditions incorporated under Exts.P3 and P4 no 'Tree Tax' was collected from the petitioners. But during the year 2008 the petitioners were issued with a demand notice requiring them to pay an amount of Rs.4,92,069/- towards 'Tree Tax' due for the years 2005-2006 and 2006-2007, along with interest. The liability is disputed by the petitioners contending that they were already exempted from payment of 'Tree Tax'.

Challenging Ext.P5 the petitioners filed a writ petition before this court as W.P.(C) No.10042/2008, in which an interim stay was granted against the recovery subject to the petitioners executing a simple bound and making it clear that the amount demanded will not be treated as arrears to refuse grant of license for the subsequent year. The said writ petition was disposed of through Ext.P7 judgment, quashing the demand. But the Government filed a review against the said judgment.

3. In the judgment in R.P. No.112/2010 this court had recalled Ext.P7 judgment. Subsequently the said writ petition was withdrawn at the instance of the petitioners, in view of filing of the present writ petition challenging Ext.P5. In this writ petition the petitioners are challenging Ext.P5 notice issued demanding payment of 'Tree Tax'. Inter alia a declaration is sought for to the affect that the petitioners are not liable to pay the amount demanded towards 'Tree Tax'.

4. In the counter affidavit filed on behalf of the 1^{st} respondent it is included that, Ext.P1 license was renewed in

favour of the committee to which it was originally granted up to the year 2004-2005. But consequent to registration of an Abkari case, based on the detection of illegal possession of certain quantities of Toddy in TS No.14, the said committee became ineligible for obtaining privilege for running the Toddy Shops for subsequent year of 2005-2006. Hence a new committee was constituted during the year 2005-2006 including the petitioners herein. The conduct of the Toddy Shops were entrusted to the new committee during 2005-06. Hence the petitioners were the licensees of the above Toddy Shops from 2005-2006 onwards. Therefore it is contended that, by virtue of the provisions contained in Ext.P4, especially Clause 12 thereon, the petitioners are not entitled to claim the benefit of 'exemption from 'Tree Tax', because they obtained the license for Toddy Shops only in the year 2005-2006. It is contended that no were in the renewal it was mentioned that the licensee will be exempted from payment of 'Tree Tax'. It is further pointed out in the counter affidavit that as per G.O(P)No.44/05/TD, dated 31.3.2005 conditions inserted in the Abkari policy for the year 2005-2006 is to the affect that, 'the licensees who have been obtained relaxation on or after 2nd June 2003 in the payment of 'Tree Tax' under the Tree Tax Rules need not pay the same when such licenses are renewed'. Since the petitioners were entrusted with conduct of the Toddy Shops only on 2.4.2005 the condition is not applicable to the Toddy shops in question, is the contention.

5. While evaluating the rival contentions it is to be taken note of that, there is no dispute as to the grant of license in favour of the committee of workers during the year 2002-2003. It is also not in dispute that the said Committee was exempted from payment of 'Tree Tax' with respect to the years 2002-2003 and 2003-2004. The impugned demand for payment of 'Tree Tax' is with respect to the years of 2005-2006 and 2006-2007. From Ext.P4 it is evident that the policy was to the affect that the shops which are run by the committee of employees during the year 2004-05 will be renewed in favour of the same committee of employees. It further stated that if the

employees are not willing to run the shop it will be put on sale at the rent fixed at the highest rate for the previous 3 years. In Ext.P1 it is evident that renewal of Ext.P1 license was granted for the year 2005-2006. The respondents cannot dispute that the renewal was granted not in accordance with Ext.P4 policy. So it is to be presumed that the renewal for year 2005-2006 was affected with respect to the committee which run the shop during the year 2004-2005. Learned counsel for the petitioner contended that the endorsements contained in Ext.P1 would only indicate that there were changes in the members of the committee. But the renewal was granted on the basis that the committee was continuing in running the shop during the previous year. The respondents could not establish that there existed any fresh grant of the privilege, for running the shops during the year 2005-2006. On the other hand the endorsement contained in Exts.P1 would reveal that it was only a renewal of the existing license granted.

6. It is pertinent to note that going by the specific conditions incorporated in Ext.P4 the committee including

the petitioners could not have been selected afresh to grant a license, unless they were eligible for renewal. Therefore the contention is that the petitioners is a new committee selected for the grant of privilege during the year 2005-2006, cannot be accepted. On the other hand the license which existed during the previous year was admittedly renewed, which will be indicative of the fact that the authorities found that the committee including the petitioners were eligible to run the shop during the years 2005-2006 and 2006-2007. If the privilege was renewed to the committee of workers then naturally the relaxation granted with respect to payment of 'Tree Tax' also should continue. This is more so because the proviso to Clause 12 in Ext.P4 specifies that licensees who have obtained relaxation after June 2003 in the matter of payment of 'Tree Tax' under the Tree Tax Rules need not furnish the same for renewal of the license.

7. The learned counsel for the petitioner pointed out that the authorities have proceeded against the previous members of the committee for realisation of 'Tree Tax' with

respect to the year 2004-05. The said demand was challenged in a writ petition filed before this court, which was disposed of through Ext.P8 common judgment. This court categorically found that while renewing the license for the subsequent year, no communication was given to the petitioners therein to the affect that such renewal was with that a condition that exemption from payment of 'Tree Tax' allowed for the previous year would not be available. Hence it is found that once the license is renewed in favour of the previous licensee without option it should be assumed that such renewal was on the same terms and conditions for the previous year. This court is of the considered opinion that the same principle is applicable in the present case also. Since the privilege for the year 2005-06 and 2006-07 was granted on the basis of a renewal of the existing license, it has to be presumed that the renewal was on the same terms and conditions existed for the previous year. Therefore the respondents are not entitled to realise 'Tree Tax' from the petitioners with respect to the years 2005-2006 and 2006-2007.

In the result the writ petition is allowed and Ext.P5 demand for payment of 'Tree Tax' is hereby quashed.

Sd/-
C.K.ABDUL REHIM, JUDGE.

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