

Assistant Commissioner-I vs Malabar Dazzle India (P) Ltd

Assistant Commissioner-I vs Malabar Dazzle India (P) Ltd

SooperKanoon Citation : sooperkanoon.com/1667003

Court : Kerala

Decided On : Aug-06-2021

Judge : Honourable Mr.Justice S.V.Bhatti,Honourable Mr. Justice Bechu Kurian Thomas

Appeal No. : WA/2362/2015

Appellant : Assistant Commissioner-I

Respondent : Malabar Dazzle India (P) Ltd

Judgement :

C.R.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE S.V.BHATTI & THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS FRIDAY, THE 6TH DAY OF AUGUST 2021 / 15TH SRAVANA, 1943 WA NO. 2312 OF 2015 AGAINST THE JUDGMENT DATED 24.02.2015 IN WPC 4664/2012 OF HIGH COURT OF KERALA, ERNAKULAM APPELLANT/ RESPONDENT IN THE W.P.(C) : THE COMMERCIAL TAX OFFICER, 3RD CIRCLE THRISSUR, DEPARTMENT OF COMMERCIAL TAXES, THRISSUR-680 001. BY SPL.GOVERNMENT PLEADER

(TAXES)ADV.MOHAMMED RAFIQ RESPONDENT/ WRIT PETITIONER
IN THE W.P.(C) :

M/S. CHUNGATH JEWELLERY, M.G.ROAD, THRISSUR-680001, A PARTNERSHIP FIRM REGISTERED UNDER THE INDIAN PARTNERSHIP ACT REPRESENTED BY ITS PARTNER SHRI.C.P.PAUL, CHUNGATH HOUSE, CHALAKKUDY - 680 307. BY ADVS. SRI.RAJU JOSEPH (SR.) SRI.C.JOSEPH ANTONY SRI.K.T.POULOSE KORATTY THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28.07.2021, ALONG WITH W.A.NOS.2316, 2334, 2337, 2338, 2347, 2355, 2362, 2363, 2365, 2384, 2391, 2438 of 2015, W.P.(C).NOS.9177 & 13336 of 2012, THE COURT ON 06.08.2021 DELIVERED THE FOLLOWING :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE S.V.BHATTI & THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS FRIDAY, THE 6TH DAY OF AUGUST 2021 / 15TH SRAVANA, 1943 WA NO. 2316 OF 2015 AGAINST THE JUDGMENT DATED 24.02.2015 IN WPC 6434/2012 OF HIGH COURT OF KERALA, ERNAKULAM APPELLANT/ RESPONDENT IN THE W.P.(C): 1 ASSISTANT COMMISSIONER (KVAT) COMMERCIAL TAXES, SPECIAL CIRCLE, MALLAPPURAM, PIN - 676 131. 2 STATE OF KERALA REPRESENTED BY THE PRINCIPAL SECRETARY TO GOVERNMENT, TAXES DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM - 695 001. BY SPL.GOVERNMENT PLEADER (TAXES)ADV.MOHAMMED RAFIQ RESPONDENT/ WRIT PETITIONER IN THE W.P.(C) : MALABAR PRECIOUS JEWELS PVT. LTD. MASHREQ TRADE CENTRE, CALICUT ROAD, PERINTHALMANNA, MALAPPURAM DISTRICT, REPRESENTED BY ITS DIRECTOR M. ABDUL MAJEED. BY ADVS. SRI.S.ANIL KUMAR (TRIVANDRUM) SRI.K.S.HARIHARAN NAIR THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 28.07.2021, ALONG WITH WA.2312/2015 AND CONNECTED CASES, THE COURT

ON 06.08.2021 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE S.V.BHATTI & THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS FRIDAY, THE 6TH DAY OF AUGUST 2021 / 15TH SRAVANA, 1943 WA NO. 2334 OF 2015 AGAINST THE COMMON JUDGMENT DATED 24.02.2015 IN WPC 21591/2012 OF HIGH COURT OF KERALA, ERNAKULAM APPELLANT/ RESPONDENT IN THE W.P.(C) : THE ASSISTANT COMMISSIONER (ASSESSMENT), COMMERCIAL TAXES, KOZHIKODE PIN - 673 001 BY SPL.GOVERNMENT PLEADER (TAXES)ADV.MOHAMMED RAFIQ RESPONDENT/ WRIT PETITIONER IN THE W.P.(C). : MALABAR GOLD PALACE PVT.LTD., MALABAR GATE, RAM MOHAN ROAD, KOZHIKODE - 4, REPRESENTED BY ITS DIRECTOR KP. VEERANKUTTY BY ADVS. SRI.S.ANIL KUMAR (TRIVANDRUM) SRI.K.S.HARIHARAN NAIR THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 28.07.2021, ALONG WITH WA.2312/2015 AND CONNECTED CASES, THE COURT ON 06.08.2021 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE S.V.BHATTI & THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS FRIDAY, THE 6TH DAY OF AUGUST 2021 / 15TH SRAVANA, 1943 WA NO. 2337 OF 2015 AGAINST THE COMMON JUDGMENT DATED 24.02.2015 IN WPC 7451/2012 OF HIGH COURT OF KERALA, ERNAKULAM APPELLANTS/ RESPONDENTS IN THE W.P.C. : 1 THE ASSISTANT COMMISSIONER, COMMERCIAL TAXES, SPECIAL CIRCLE-II, KOZHIKODE 2 STATE OF KERALA, REPRESENTED BY THE PRINCIPAL SECRETARY TO GOVERNMENT, TAXES DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM - 695 001

BY SPL.GOVERNMENT PLEADER (TAXES)ADV.MOHAMMED RAFIQ
RESPONDENT/ WRIT PETITIONER IN THE W.P.(C). : MALABAR
RETNAMAHAL (P) LTD., VATAKARA - 673 104, REPRESENTED BY
ITS DIRECTOR, SRI.V.S.SHEREEJ BY ADVS. SRI.S.ANIL KUMAR
(TRIVANDRUM) SRI.K.S.HARIHARAN NAIR THIS WRIT APPEAL
HAVING BEEN FINALLY HEARD ON 28.07.2021, ALONG WITH
WA.2312/2015 AND CONNECTED CASES, THE COURT ON
06.08.2021 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE S.V.BHATTI & THE
HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS FRIDAY,
THE 6TH DAY OF AUGUST 2021 / 15TH SRAVANA, 1943 WA NO.
2338 OF 2015 AGAINST THE COMMON JUDGMENT DATED
24.02.2015 IN WPC 9278/2013 OF HIGH COURT OF KERALA,
ERNAKULAM APPELLANTS/ RESPONDENTS IN THE W.P.C. : 1 THE
ASSISTANT COMMISSIONER, COMMERCIAL TAXES, SPECIAL
CIRCLE, KANNUR, PIN - 670 002 2 THE INTELLIGENCE OFFICER
(IB), COMMERCIAL TAXES, KANNUR, PIN - 670 002 3 STATE OF
KERALA, REPRESENTED BY THE PRINCIPAL SECRETARY TO THE
GOVERNMENT, TAXES DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM - 695 001 BY SPL.GOVERNMENT
PLEADER (TAXES)ADV.MOHAMMED RAFIQ RESPONDENT/ WRIT
PETITIONER IN THE W.P.(C).: MALABAR GOLD SUPER MARKET
PVT.LTD, NETHAJI ROAD, KANNUR, REPRESENTED BY ITS
DIRECTOR SRI. MUJEEB REHMAN BY ADVS. SRI.S.ANIL KUMAR
(TRIVANDRUM) SRI.K.S.HARIHARAN NAIR THIS WRIT APPEAL
HAVING BEEN FINALLY HEARD ON 28.07.2021, ALONG WITH
WA.2312/2015 AND CONNECTED CASES, THE COURT ON
06.08.2021 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE S.V.BHATTI & THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS FRIDAY, THE 6TH DAY OF AUGUST 2021 / 15TH SRAVANA, 1943 WA NO. 2347 OF 2015 AGAINST THE COMMON JUDGMENT DATED 24.02.2015 IN WPC 3740/2012 OF HIGH COURT OF KERALA, ERNAKULAM APPELLANTS/ RESPONDENTS IN THE W.P.C: 1 THE ASSISTANT COMMISSIONER, COMMERCIAL TAXES, SPECIAL CIRCLE, PALAKKAD, PIN - 678 001 2 STATE OF KERALA, REPRESENTED BY THE PRINCIPAL SECRETARY TO GOVERNMENT, TAXES DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM - 695 001 BY SPL.GOVERNMENT PLEADER (TAXES)ADV.MOHAMMED RAFIQ RESPONDENT/ WRIT PETITIONER IN THE W.P.(C) : MALABAR GOLD, MALABAR BUSINESS CENTRE(P) LTD, MALABAR FORT, G.B ROAD, PALAKKAD, REPRESENTED BY ITS DIRECTOR BY ADVS. SRI.S.ANIL KUMAR (TRIVANDRUM) SRI.K.S.HARIHARAN NAIR THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 28.07.2021, ALONG WITH WA.2312/2015 AND CONNECTED CASES, THE COURT ON 06.08.2021 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE S.V.BHATTI & THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS FRIDAY, THE 6TH DAY OF AUGUST 2021 / 15TH SRAVANA, 1943 WA NO. 2355 OF 2015 AGAINST THE COMMON JUDGMENT DATED 24.02.2015 IN WPC 128/2013 OF HIGH COURT OF KERALA, ERNAKULAM APPELLANTS/RESPONDENTS AND ADDL.4TH RESPONDENT IN THE W.P.(C): 1 ASSISTANT COMMISSIONER, COMMERCIAL TAXES SPECIAL CIRCLE, KANNUR, PIN - 670 002. 2 INTELLIGENCE OFFICER (IB), COMMERCIAL TAXES, KANNUR, PIN - 670 002.

3 STATE OF KERALA, REPRESENTED BY THE PRINCIPAL SECRETARY TO GOVERNMENT TAXES DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM - 695 001. 4 THE INSPECTING ASSISTANT COMMISSIONER, COMMERCIAL TAXES, KANNUR - 670 002. BY SPL.GOVERNMENT PLEADER (TAXES)ADV.MOHAMMED RAFIQ RESPONDENT/ WRIT PETITIONER IN THE W.P.(C): MALABAR GOLD SUPER MARKET (KANNUR) (P) LTD. NETHAJI ROAD, KANNUR REPRESENTED BY ITS DIRECTOR SRI.M.P.AHAMMED BASHEER.

BY ADVS. SRI.S.ANIL KUMAR (TRIVANDRUM) SRI.K.S.HARIHARAN NAIR THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 28.07.2021, ALONG WITH WA.2312/2015 AND CONNECTED CASES, THE COURT ON 06.08.2021 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE S.V.BHATTI & THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS FRIDAY, THE 6TH DAY OF AUGUST 2021 / 15TH SRAVANA, 1943 WA NO. 2362 OF 2015 AGAINST THE COMMON JUDGMENT DATED 24.02.2015 IN WPC 6433/2012 OF HIGH COURT OF KERALA, ERNAKULAM APPELLANTS/ RESPONDENTS IN THE W.P.(C): 1 ASSISTANT COMMISSIONER-I (KVAT), COMMERCIAL TAXES, SPECIAL CIRCLE, MALAPPURAM - PIN 676 505. 2 STATE OF KERALA, REPRESENTED BY THE PRINCIPAL SECRETARY TO GOVERNMENT, TAXES DEPARTMENT, SECRTARIAT, THIRUVANANTHAPURAM - 695 001. BY SPL.GOVERNMENT PLEADER (TAXES)ADV.MOHAMMED RAFIQ RESPONDENT/ WRIT PETITIONER IN THE W.P.(C) : MALABAR DAZZLE INDIA (P) LTD, CRESCENT PLAZA, NATIONAL HIGHWAY, EDAPPAL, MALAPPURAM DISTRICT, REPRESENTED BY ITS DIRECTOR K.P.VEERANKUTTY. BY ADVS. SRI.S.ANIL KUMAR (TRIVANDRUM) SRI.K.S.HARIHARAN NAIR THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON

28.07.2021, ALONG WITH WA.2312/2015 AND CONNECTED CASES, THE COURT ON 06.08.2021 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE S.V.BHATTI & THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS FRIDAY, THE 6TH DAY OF AUGUST 2021 / 15TH SRAVANA, 1943 WA NO. 2363 OF 2015 AGAINST THE COMMON JUDGMENT DATED 24.02.2015 IN WPC 6680/2013 OF HIGH COURT OF KERALA, ERNAKULAM APPELLANTS/ RESPONDENTS IN THE W.P.(C) : 1 ASSISTANT COMMISSIONER (KVAT) COMMERCIAL TAXES, SPECIAL CIRCLE, KOTTAYAM - 686 001. 2 STATE OF EKRALA, REPRESENTED BY THE PRINCIPAL SECRETARY TO GOVERNMENT, TAXES DEPARTMENT, SECRETARIAT, THIRUVANANTHAPRUAM - 695 001., BY SPL.GOVERNMENT PLEADER (TAXES)ADV.MOHAMMED RAFIQ RESPONDENT/ WRIT PETITIONER IN THE W.P.(C) : SWARNAKAMMAL JEWELS (INDIA) (P) LTD., BAKER JUNCTION, KOTTAYAM, REPRESENTED BY ITS DIRECTOR. BY.ADV.S.ANIL KUMAR (TRIVANDRUM) THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 28.07.2021, ALONG WITH WA.2312/2015 AND CONNECTED CASES, THE COURT ON 06.08.2021 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE S.V.BHATTI & THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS FRIDAY, THE 6TH DAY OF AUGUST 2021 / 15TH SRAVANA, 1943 WA NO. 2365 OF 2015 AGAINST THE COMMON JUDGMENT DATED 24.02.2015 IN WPC APPELLANTS/ RESPONDENTS IN THE W.P.(C) : 1 THE INTELLIGENCE OFFICER (IB) COMMERCIAL TAXES, KANNUR - 670 002. 2 THE ASSISTANT COMMISSIONER, COMMERCIAL TAXES, SPECIAL CIRCLE,KANNUR, PIN - 670 002.

3 STATE OF KERALA, REPRESENTED BY THE PRINCIPAL SECRETARY TO GOVERNMENT, TAXES DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM - 695 001 4 THE INSPECTING ASSISTANT COMMISSIONER, COMMERCIAL TAXES, KANNUR - 670 002. BY SPL.GOVERNMENT PLEADER (TAXES)ADV.MOHAMMED RAFIQ RESPONDENT/ WRIT PETITIONER IN THE W.P.(C): MALABAR ORNAMENTS PVT. LTD., PRANAM BUILDINGS, A.V.K.NAIR ROAD, THALASSERY, KANNUR DISTRICT, PIN - 670 101, REPRESENTED BY ITS DIRECTOR

BY ADVS. SRI.S.ANIL KUMAR (TRIVANDRUM) SRI.K.S.HARIHARAN NAIR THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 28.07.2021, ALONG WITH WA.2312/2015 AND CONNECTED CASES, THE COURT ON 06.08.2021 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE S.V.BHATTI & THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS FRIDAY, THE 6TH DAY OF AUGUST 2021 / 15TH SRAVANA, 1943 WA NO. 2384 OF 2015 AGAINST THE COMMON JUDGMENT DATED 24.02.2015 IN WPC 9456/2013 OF HIGH COURT OF KERALA, ERNAKULAM APPELLANTS/ RESPONDENTS IN THE W.P.(C) : 1 THE ASSISTANT COMMISSIONER, COMMERCIAL TAXES, SPECIAL CIRCLE, KANNUR, PIN - 670 002. 2 STATE OF KERALA, REPRESENTED BY THE PRINCIPAL SECRETARY TO GOVERNMENT, TAXES DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM - 695 001.

BY SPL.GOVERNMENT PLEADER (TAXES)ADV.MOHAMMED RAFIQ RESPONDENT/ WRIT PETITIONER IN THE W.P.(C) : MALABAR ORNAMENTS (P) LTD., PRANAM BUILDERS, A.V.K.NAIR ROAD, THALASSERY, KANNUR DISTRICT, PIN - 670 101, REPRESENTED BY ITS DIRECTOR. BY ADV.SRI.S.ANIL KUMAR (TRIVANDRUM) THIS

WRIT APPEAL HAVING BEEN FINALLY HEARD ON 28.07.2021, ALONG WITH WA.2312/2015 AND CONNECTED CASES, THE COURT ON 06.08.2021 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE S.V.BHATTI & THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS FRIDAY, THE 6TH DAY OF AUGUST 2021 / 15TH SRAVANA, 1943 WA NO. 2391 OF 2015 AGAINST THE COMMON JUDGMENT DATED 24.02.2012 IN WPC 6435/2012 OF HIGH COURT OF KERALA, ERNAKULAM

APPELLANTS/ RESPONDENTS IN THE W.P.(C) : 1 THE ASST.COMMISSIONER (KVAT) KASARAGOD, COMMERCIAL TAXES, SPECIAL CIRCLE, KASARAGOD-671121. 2 STATE OF KERALA, REPRESENTED BY THE PRINCIPAL SECRETARY TO GOVERNMENT, TAXES DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM - 695 001 BY SPL.GOVERNMENT PLEADER (TAXES)ADV.MOHAMMED RAFIQ RESPONDENT/ WRIT PETITIONER IN THE W.P.(C) : M/S.MALABAR COLLECTIONS (PVT) LTD, M.G.ROAD, KASARAGOD - 671 121, REPRESENTED BY ITS DIRECTOR E.ABDUL JALEEL. BY ADV.SRI.S.ANIL KUMAR (TRIVANDRUM) THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 28.07.2021, ALONG WITH WA.2312/2015 AND CONNECTED CASES, THE COURT ON 06.08.2021 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE S.V.BHATTI & THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS FRIDAY, THE 6TH DAY OF AUGUST 2021 / 15TH SRAVANA, 1943 WA NO. 2438 OF 2015 AGAINST THE COMMON JUDGMENT IN W.P.(C) 21596/2012 OF HIGH COURT OF KERALA, ERNAKULAM

APPELLANT/ RESPONDENT IN THE W.P.(C) : THE AGRICULTURAL INCOME TAX AND COMMERCIAL TAX OFFICER, SULTHAN BATHERY, WAYANAD DISTRICT, PIN - 673 592. BY SPL.GOVERNMENT PLEADER (TAXES)ADV.MOHAMMED RAFIQ RESPONDENT/ WRIT PETITIONER IN THE W.P.(C) : GEHANA GOLD PALACE (P) LTD, OPPOSITE SULTHAN BATHERY GRAMA PANCHAYATH, MAIN ROAD, SULTHAN BATHERY, PIN - 673 592, REPRESENTED BY ITS DIRECTOR T.A.ABDUL NASAR. BY ADV.SRI.K.S.HARIHARAN THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 28.07.2021, ALONG WITH WA.2312/2015 AND CONNECTED CASES, THE COURT ON 06.08.2021 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE S.V.BHATTI & THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS FRIDAY, THE 6TH DAY OF AUGUST 2021 / 15TH SRAVANA, 1943 WP(C) NO. 9177 OF 2012 PETITIONER : MALABAR GOLD JEWELS (TIRUR)PVT.LTD., TIRUR, MALAPPURAM DISTRICT, REPRESENTED BY ITS DIRECTOR. BY ADVS. SRI.S.ANIL KUMAR (TRIVANDRUM) SRI.K.UMAMAHESWAR SRI.K.S.HARIHARAN NAIR RESPONDENS : 1 SALES TAX OFFICER TIRUR, MALAPPURAM DISTRICT, PIN -673 621. 2 STATE OF KERALA, REPRESENTED BY THE PRINCIPAL SECRETARY TO GOVERNMENT, TAXES DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM - 695 001. BY SPL.GOVERNMENT PLEADER (TAXES)ADV.MOHAMMED RAFIQ THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 28.07.2021, ALONG WITH WA.2312/2015 AND CONNECTED CASES, THE COURT ON 06.08.2021 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE S.V.BHATTI & THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS FRIDAY, THE 6TH DAY OF AUGUST 2021 / 15TH SRAVANA, 1943 WP(C) NO. 13336 OF 2012 PETITIONER : M/S. FASHION JEWELLERY, MAIN ROAD, CHALAKUDY, THRISSUR DISTRICT REPRESENTED BY ITS PARTNER C.P.PAUL. BY ADVS. SRI.HARISANKAR V. MENON SMT.MEERA V.MENON SRI.MAHESH V.MENON RESPONDENTS : 1 COMMERCIAL TAX OFFICER, CHALAKUDY PIN-680307. 2 STATE OF KERALA REPRESENTED BY ITS SECRETARY, TAXES DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 695001.

BY SPL.GOVERNMENT PLEADER (TAXES)ADV.MOHAMMED RAFIQ THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 28.07.2021, ALONG WITH WA.2312/2015 AND CONNECTED CASES, THE COURT ON 06.08.2021 DELIVERED THE FOLLOWING: CR

JUDGMENT

W.A.Nos.2312, 2316, 2334, 2337, 2338, 2347, 2355, 2362, 2363, 2365, 2384, 2391, 2438 of 2015 & W.P.(C).Nos.9177 & 13336 of 2012 Dated this the 6th day of August, 2021

Bechu Kurian Thomas, J.

When the compounded tax for dealers in ornaments or articles of gold, or other metals were retrospectively amended for the year 2011-12, the dealers raised a challenge against the collection of differential tax. Several writ petitions were filed before this Court. The learned Single Judge allowed all the writ petitions after concluding that the differential tax attempted to be collected from the writ petitioners for the assessment year 2011-12 was legally unsustainable and accordingly quashed all the impugned orders/demand notices. The department has come up in these appeals contending that the retroactive operation of the compounded rate of tax was within the scope of the Government's authority and

the consequential collection of differential tax was legally valid.

2. This batch consists of 13 writ appeals and two writ

petitions. W.A.No.2312/2015 is treated as the main appeal. The questions arising for consideration are common and hence we heard all the writ appeals and the writ petitions together. Since the circumstances are similar in all these cases, we confine the factual narrative that too, briefly, to the circumstances pleaded in the leading case.

3. The writ petition was preferred when the dealer was

directed to pay the balance tax due under the newly introduced compounded rate of tax. It was contended that the compounded tax being in the nature of a contract, the Government was estopped from demanding compounded tax at a higher rate after Ext.P1 sanction was granted by the assessing officer to pay tax under the compounded scheme, that too in instalments.

4. Section 8(f) of the Kerala Value Added Tax Act, 2003

(for short 'the KVAT Act') provides for compounded tax for dealers in ornaments and articles of gold, etc. On 24-02-2011 a finance bill was presented before the 12th Kerala Legislative Assembly, as Bill No.426 (hereinafter referred to as the 'First Bill'). The Bill proposed a revision of the existing rates for compounded tax under section 8(f) of the KVAT Act from 01-04-2011. Even though the Bill was not passed by the legislative assembly, due to statutory prescriptions and declarations made in the Bill, the tax implications under the First Bill came into effect from the proposed date i.e: 01-04-2011. The year 2011 was the year of elections to the Kerala Legislative Assembly. The 12th Kerala Legislative Assembly was therefore dissolved on 14-05-2011 and a new Government took charge. Thereafter the new Government brought a fresh Finance Bill on 19.07.2011 as Bill No.20 (hereinafter referred to as the 'Second Bill') of the 13th Kerala Legislative Assembly. The second bill was passed on 08-11-2011 as Kerala Finance Act 16 of 2011, (hereinafter referred to as 'Act 16 of 2011').

5. The 1st respondent is a dealer in ornaments and

articles of gold. 1st respondent (hereinafter referred to as the dealer) had opted to pay tax at compounded rates from the year 2009-10 onwards. The dealer was permitted by Ext.P1 order of the assessing authority to pay tax at the compounded rate prevalent as on 01-04-2011 for the year 2011-12 on the basis of the rates prescribed under the First Bill. However, after the coming into force of the amended provisions, the assessing officer demanded the differential tax allegedly due from the dealer on the basis of the amended provisions. The demand was challenged by the dealer in the writ petition. A relief of declaration was sought for declaring that the provisions of the Second Bill which resulted in Finance Act 16 of 2011 shall not affect the vested rights accrued to the dealer on account of the order permitting it to pay tax at compounded rates on the basis of the First Bill.

6. By the judgment under challenge, the learned Single

Judge held that once the assessee opts to pay tax at compounded rates and the said option was accepted, there came into existence a contract which neither side could resile from. It was also held that the validation clause in Act 16 of 2011 made it legally impermissible and unfair to proceed against the dealers with the demand for differential tax. As mentioned earlier, the said judgment is challenged by the Department. The writ petitions connected with this batch of writ appeals are those which were omitted to be tagged along with the connected cases before the learned Single Judge. They raise the same issue as in the other writ petitions and are hence being considered along with the appeals.

7. We heard the learned Senior Government Pleader

Sri.Mohammed Rafiq on behalf of the appellant. We also heard Senior Advocate Raju Joseph, Adv. Harishankar V. Menon and Adv. Anil Kumar on behalf of the respondents.

8. Under S. 8(f)(i) of the KVAT Act, the rate of

compounded tax for dealers who opted to pay tax under the section for the first time was marginally higher than those who had opted to pay the tax at compounded rates from the previous year or even before that period. Section

8(f)(v) of the Act dealt with the category of dealers who had opted for compounded tax from the previous years. It may be essential to extract section 8(f)(i) and S.8(f)(v) of the KVAT Act as it stood on 31-03-2011. (Explanations 1 to 5 and 7 & 8 and sub-clauses (ii) to (iv) of S. 8(f) are not extracted as they are not relevant for the purpose of these appeals). S.8(f)(i) as on 31.03.2011 was as follows; S.8. Payment of tax at compounded rates.- Notwithstanding anything contained in section 6,-

(f)(i) any dealer in bullion or ornaments or wares or articles of gold, silver or platinum group metals including diamond may at his option, instead of paying tax on their sale in the State in respect of such goods in accordance with the provisions of section 6, may pay tax at the rate of,--

(a) one hundred and fifteen per cent, in case the total turnover of the dealer opting to pay tax under this clause, for the preceding year was above rupees ten lakhs or below;

(b) one hundred and twenty percent, in case the total turnover of the dealer opting to pay tax under this clause, for the preceding year was above rupees ten lakhs and up to rupees forty lakhs;

(c) one hundred and thirty five percent, in case the total turnover of the dealer opting to pay tax under this clause, for the preceding year was above rupees forty lakhs and up to rupees one crore; and at

(d) one hundred and fifty percent, in case the total turnover of the dealer opting to pay tax under this clause, for the preceding year was above rupees one crore and above;

of the highest tax payable by him as conceded in the return or accounts, or tax paid by him under this Act, whichever is higher, for a year during any of the three consecutive years preceding that to which such option relates.

Explanation 6 : Where a dealer has opted for payment of tax under this clause for the first time in 2010-11 and has commenced business only in

2009-10 and the tax payable as per return or account during 2009-10 is less than the output tax payable, then the tax payable for 2009-10 shall be notionally re-determined on the basis of output tax for determining the tax liability for 2010-11;

(v). Where a dealer had paid tax under this clause for the previous year, the tax payable for the succeeding year under this clause shall be, (a). One hundred and five percent of such tax paid during the previous year, in case their turnover for the above goods for the preceding year was rupees ten lakhs or below; (b). one hundred and ten percent of such tax paid during the previous year, in case their turnover for the above goods for the preceding year was above rupees ten lakhs and up to rupees forty lakhs; (c). one hundred and fifteen percent of such tax paid during the previous year, in case their turnover for the above goods for the preceding year was above rupees forty lakhs and up to rupees one crore; and

(d) one hundred and twenty five percent of such tax paid during the previous year, in case their turnover for the above goods for the preceding year exceeded rupees one crore :

Provided that the tax payable under this sub-clause by the dealers covered under Explanation 6 of this clause shall be at the appropriate percentage of tax mentioned in (a), (b), (c) or

(d) above, of the tax re-determined under the said Explanation.;

(vi) Where a dealer who opts for compounding under this

clause has been transacting business under a brand name, the compounded tax payable under this clause shall not be less than the compounded tax payable and the business been run as a branch of the franchisee or of other franchisees.

9. The above compounded rate of tax for dealers falling under section 8(f) was sought to be revised with effect from 01-04-2011 by the First Bill as follows:

(ii) in clause (f),-

In sub-clause (i), in Explanation 6, for the figures 2009-10 and 2010-11, wherever they occur, the figures 2010-11 and 2011-12 shall respectively be substituted; After sub-clause (i), the following sub-clause shall be inserted, namely:- (ia) Notwithstanding anything contained in this clause, a dealer shall not be allowed to opt for the payment of tax under this clause unless he has conducted business up to a full year as on the first day of April of the year to which the option relates.' (c). In sub-clause (v),-

(i) In item (a), for the words one hundred and five percent of such, the words the same amount of shall be substituted;

(ii) In item (b), for the words one hundred and ten percent, the words one hundred and five percent shall be substituted;

(d) Sub-clause (vi) shall be omitted;

10. The changes brought about by the Second Bill which culminated as Act 16 of 2011 were as follows;

(v). Where a dealer had paid tax under this clause for the previous year, the tax payable for the succeeding year under this clause shall be calculated at the rates mentioned in item (i) or (ii) below, whichever is higher-

(i) (a) at the same amount of tax paid during the previous year, in case their turnover for the above goods for the preceding year was rupees ten lakh or below;

(b) at one hundred and five percent of such tax paid during the previous year, in case their turnover for the above goods for the preceding year was above rupees ten lakh and up to rupees forty lakh;

(c) at one hundred and fifteen percent of such tax paid during the previous year, in case their turnover for the above goods for the preceding year was above rupees forty lakh and up to rupees one crore; and

(d) at one hundred and twenty five percent of such tax paid during the previous year, in case their turnover for the above goods for the preceding year exceeded rupees one crore:

Provided that the tax payable under this sub-clause by the dealers covered under Explanation 6 of this clause shall be at the appropriate percentage of tax mentioned in (a), (b), (c) or (d) above, of the tax re-determined under the said Explanation.

(ii) 1.25% of the turnover of sales of the goods covered under this clause, for the previous year.;

11. The above changes for clarity are reduced into a tabular column as follows:

Annual For new optees as Clause (v)	From turnover of on 31-03-2011 as on 01-04-2011	01-04-2011 by Act the preceding 31-03-2011 by First Bill 16/2011.
Less than 10	115% of the 105% Same amount lakhs	highest tax in the of previous amount or preceding 3 years years tax 1.25% of turnover whichever is higher

Between 10 and 40	120% of the 110% 105% 105% lakhs and 40 highest tax in the of previous of previous or lakhs preceding 3 years years tax years tax 1.25% of turnover whichever is higher
Between 40 and one crore	135% of the 115% 115% lakhs and one highest tax in the of previous No change or crore preceding 3 years years tax 1.25% of turnover whichever is higher
Above one crore	150% of the 125% 125% crore highest tax in the of previous No change or preceding 3 years years tax 1.25% of turnover whichever is higher

12. It is pertinent to mention that if a declaration under

the provisions of the Kerala Provisional Collection of Revenues Act 1985, is incorporated in any Bill that is introduced in the Legislative Assembly, the tax or fee proposed to be brought in under the Bill, shall have effect from 1st of April following the date of introduction of the Bill, and the said declaration shall have the force of law. This is provided for in sections 3 and 4 of the above mentioned Act. Since the First Bill, introduced in the Legislative Assembly had a declaration as stipulated in the Kerala Provisional Collection of Revenues Act 1985, the imposition of the new rate of tax under the First Bill came into effect from 01-04-2011.

13. As per the provisions of Article 196(5) of the

Constitution of India, a Bill pending before the Legislative Assembly of a State shall lapse on dissolution of the Assembly. The 12 th Kerala Legislative Assembly was dissolved on 14-05-2011 and thus, the First Bill lapsed as on that date, by operation of law.

14. To overcome the legal hurdle of the lapse of the First

Bill, the Second Bill was introduced by the new Government on 19-07-2011 which culminated in Act 16 of 2011. Though the First Bill had lapsed, the tax collected and or continued to be collected and the various actions initiated under lapsed Bill had to be given the authority of law to satisfy the requirement of Article 265 of the Constitution of India. Hence a validation clause was inserted in Act 16 of 2011 which reads as follows;

12. Validation-(1) Notwithstanding the lapse of the

Kerala Finance Bill, 2011 (Bill No.426 of the 12 th Kerala Legislative Assembly) (hereinafter referred to as the said Bill) and the cesser of force of law of the declared provisions of the said Bill, anything done or any action taken, including the levy And collection of tax or duty, during the period from the 1st day of April, 2011 to the 19 th day of July, 2011, by virtue of the declared provisions contained in the said Bill, under the Kerala Surcharge on Taxes Act, 1957 (11 of 1957)

or under the Kerala Tax on Luxuries Act, 1976 (32 of 1976) or under the Kerala Value Added Tax Act, 2003 (30 of 2004) (hereinafter referred to as the 'respective Acts'), as they stand amended by the said Bill, shall be deemed to be and to have always been, for all purposes, validly and effectively done or taken under the provisions of the respective Acts, as if the said amendments had been in force at all material times.

(2) Notwithstanding anything contained in the

respective Acts during the period from 1 st April, 2011 to the 19th day of July,2011 during which the declared provisions contained in the said Bill was in force, anything done or any section taken by virtue of the said provisions of the said Bill, shall be deemed to have been validly done or taken under the respective Acts and no action shall lie against any dealer or authority on the ground of short levy or refund of excess tax or duty and tax or duty collected, if any, by a dealer or an authority, as the case may be, shall be paid over to the Government.

15. The legislative power of the State Legislature

to amend the Act with retrospective effect, is neither disputed nor challenged. It is settled that the power to legislate carries with it the power to legislate retrospectively also [See M/s. J. K. Jute Mills Co. Ltd. v. State of U.P. and Another, [AIR 1961 SC 1534]; Mt. Jadao Bahuji v. The Municipal Committee, Khandwa and Another, [AIR 1961 SC 1486]; M/s. Raghubar Dayal Jai Parkash and Others v. The Union of India and Another, [AIR 1962 SC 263]; State of Karnataka and Others v. Karnataka Pawn Brokers Association and Others, [(2018) 6 SCC 363]. Though there are limitations to the power to legislate retrospectively, none of the dealers have questioned the retrospectivity in the instant cases.

16. The entire gamut of dispute in these cases therefore

revolves around the interpretation of the validation clause as extracted earlier. The learned Government Pleader submitted that the validation clause was only a device for continuity in legislation to avoid a vacuum. It was also submitted that the validation clause in Act 16 of 2011 and the retrospectivity of the taxing provisions were both distinct and separate and that since the legislature is vested with the power to impose rates of tax retrospectively, the rates fixed as per Act 16 of 2011 shall be deemed to have been in operation from 01-04-2011 and the differential tax was liable to be collected from the dealers.

17. The learned counsel for the dealers on the other

hand submitted that once compounding is permitted, it creates a contract which cannot be interfered with otherwise than through rectification under section 63 of KVAT Act or in revisional proceedings. Though the Counsel in unison submitted that they have no quarrel with the proposition on the power of retrospectivity of taxing statutes they submitted that the words "save as otherwise provided" in Act 16 of 2011 rendered the retrospective operation governed by the validation clause. In other words, according to all the learned Counsel the retrospectivity is subject to the validation clause.

18. It is true, as stated by the learned Single Judge,

that when an assessee opts to pay tax at compounded rates and such an option is accepted by the authorities under the KVAT Act, either expressly by an order or impliedly through their conduct, there comes into existence a contract from which neither side can resile. Reliance upon the decision in *Bhima Jewellery v. Asst. Commissioner (Assessment)* [(2014) 71 VST 110 (SC)] is relevant for the said proposition. However, in the instant case, the situation is different. The commercial tax officer never proposed to resile from the permission granted for payment of tax at compounded rates. The assessing officer only demanded the differential tax brought about by the retrospective operation of the amended provisions. Since it is no longer *res integra* that State is entitled to bring in tax with retrospective operation, there is no legal embargo in demanding the differential tax, even in respect of compounded tax, brought into the amendment with retrospective effect. At this juncture, we remind ourselves that none of the dealers have challenged the rates of tax imposed by the amended provision. As long as there is no challenge against the amended provisions, it was incumbent for the assessing officers to recover the differential rate of tax.

19. The second limb of the argument of the dealers

which found favour with the learned Single Judge and which is certainly impressive in a first blush is that in view of the validation clause brought in as Section 12 to Finance Act 16 of 2011, the commercial tax officers were not entitled to proceed against the petitioner with the demand for the differential tax.

20. Section 2 of Act 16 of 2011 commences with the

words "Save as otherwise provided in this Act". In the six sub-clauses that follows, six different dates have been prescribed as the dates on which the provisions come into force. The first sub-section provides for coming into force of the provision on the first day of April 2005. Second sub-section mentions the date as first day of April 2007, the third sub clause mentions first day of April 2010 as the date of coming into force of that provision. Sub clause (4) mentions first day of April 2011 as the date of coming into force while sub clause (5) mentions 19-07-2011 as the date of coming into force of the said provisions. Sub clause (6) mentions at once as the date of coming into force of all the remaining provisions. Therefore, a conscious attempt is made by the legislature to bring the provisions of the different clauses of the amended provisions to be applicable with effect from different dates. We cannot be oblivious of the said intention of the legislature, explicitly expressed through the different dates mentioned in the amended provisions.

21. The apparent confusion among the dealers is

created on account of the wording in the validation clause of Act 16 of 2011. On a deeper scrutiny of sub clause (2) of the validation clause, it can be understood that the language used in the said provision was not with a view to erase the retrospectivity brought in by the amended provisions but was intended only as a measure of validating the First Bill which had by virtue of Article 196(5) of the Constitution lapsed. The First Bill was pending in the Legislative Assembly of the State when the Assembly was dissolved. As per Article 196(5) of the Constitution, a bill which is pending in the Legislative Assembly of a State, shall lapse on dissolution of the Assembly. The validation clause was included in Finance Act 16 of 2011 to overcome the legal imbroglio that arose on account of the dissolution of the Assembly on 14.05.2011 and the subsequent presentation of the Second Bill on 19.07.2011. The validation clause brings in a continuity and overcomes the vacuum created by the dissolution of the Assembly.

22. We can approach the validation clause through

another angle. Sub-clause (1) of section 12 of Act 16 of 2011, refers to the lapse of the Bill and the cessation of the force of law of the declared provisions of the First Bill. This part overcomes the lapse of the the Bill caused by Article 196(5) of the Constitution. The first sub-clause of the validation section confers authority of law, post facto, for the imposition and collection of tax under the First Bill. Without the aforesaid validation clause, the provisions of the First Bill, which had already come into effect on account of the declaration under the Kerala Provisional Collection of Revenues Act, 1985, would have had no force of law due to its subsequent lapse. The second sub-clause of the validation section after giving validation to the acts done or taken under the taxing statutes, gives an immunity to the dealer as well as the authorities under the taxing statutes from any action being taken on the ground of short levy or excess tax or duty collected. The words short levy or excess tax or duty collected as appearing in the validation clause are with reference to the First Bill. It is not referring to the short levy or excess tax that may arise on account of the change of rate of tax brought in by Act 16 of 2011. It would be incongruous to interpret the word 'short levy' in the validation clause as referring to the short levy arising on account of the Act 16 of 2011. Viewed in the above perspective, we have no hesitation to hold that the retrospectivity of tax or its collection brought in by the Finance Act 16 of 2011 is not controlled by the validation clause in section 12 of that Act.

23. In this context it is fruitful to bear in mind the

observation of this Court in the decision in *State of Kerala v. M/s. Desire Diamond Jewellery* (OTR No. 3 of 2010) that, a compounding application is only an application filed for payment of tax at compounded rate in accordance with the statute and not at the rate prescribed by the party because the Act does not visualise any such compounding on parties own terms.

24. We also find force in the argument of the learned

Government Pleader that the decision in *Varkisons Engineers v. State of Kerala and Another* [(2009) 16 SCC 120], had not laid down any proposition against retrospective operation of

compounded tax. The facts in the said decision and the conclusion

of the Court have a bearing. In the case of Varkisons Engineers (supra) while the application of the dealer for payment of tax at compounded rates was allowed on 09-04-2001, the Kerala Finance Act, 2001 was brought into effect from 23-07-2001. There was no provision for retrospective operation of the Act. The contention raised therein was that the unit of assessment under the compounded regime of tax being a full assessment year commencing from 1st April, the entire exercise of payment of compounded tax having been completed by 09-04-2001, in the absence of any retrospective operation of the new rate of tax either expressly or by necessary intendment, the new rate could not have been applied for an exercise that was already completed. It was in the above circumstances that the Supreme Court set aside the

judgment of this Court and remanded the same for a de novo

consideration. It was specifically mentioned in the said judgment

that the observations are made only for the purpose of remitting the case back to the Division Bench and no opinion on the merits have been made in the said case. Thus the aforesaid case has no application to the cases on hand. In the above circumstances, we are of the view that the State was bound and entitled to recover the differential tax from the dealers and the demand notices were issued in valid exercise of power. For the reasons expressed by us as above, we set aside the judgment of the learned Single Judge and allow all these appeals. The writ petitions shall stand dismissed. Sd/- S.V.BHATTI, JUDGE Sd/- BECHU KURIAN THOMAS, JUDGE RKM APPENDIX OF W.P.(C).No.9177 of 2012 PETITIONER'S EXHIBITS : P1 : COPY OF THE APPLICATION DATED 02.05.2011 IN FORM NO.1B. P2 (A) : COPY OF MONTHLY RETURN FOR APRIL, 2011. P2(B) : COPY OF MONTHLY RETURN FOR MAY, 2011. P2 (C) : COPY OF MONTHLY RETURN FOR JUNE, 2011. P3 (A) : COPY OF ACKNOWLEDGEMENT FOR APRIL, 2011 P3 (B) : COPY OF ACKNOWLEDGEMENT FOR MAY, 2011 P3 (C) : COPY OF ACKNOWLEDGEMENT FOR JUNE, 2011. P4 : COPY OF ORDER

DATED 05.03.2012. APPENDIX OF W.P.(C).No.13336 of 2012 PETITIONER'S EXHIBITS : P1 : COPY OF APPLICATION FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT. P2 : COPY OF ORDER ISSUED BY THE 1ST RESPONDENT. P2(a) : COPY OF FORM NO.1E ISSUED BY THE 1ST RESPONDENT. P3 : COPY OF NOTICE ISSUED BY THE 1ST RESPONDENT. P4 : COPY OF NOTICE ISSUED BY THE 1ST RESPONDENT.

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