



2024:KER:22714

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

MONDAY, THE 18TH DAY OF MARCH 2024 / 28TH PHALGUNA, 1945

RP NO. 185 OF 2024

AGAINST THE JUDGMENT DATED IN WP(C) NO.29666 OF 2022 OF HIGH COURT
OF KERALA

REVIEW PETITIONER/S:

- 1 THE DEPUTY COMMISSIONER,
SPECIALCIRCLE, STATE GST DEPARTMENT, PERUMBAVOOR, PIN -
683542
- 2 STATE OF KERALA REPRESENTED BY THE SECRETARY TO
GOVERNMENT
TAXES DEPARTMENT, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001
- 3 THE COMMISSIONER OF EXCISE
KERALA, THIRUVANANTHAPURAM, PIN - 695033
BY ADV GOVERNMENT PLEADER

RESPONDENT/S:

MARIYA SHOPPING COMPLEX PVT.LTD
ALUVA MUNNAR
ROAD, KOTHAMANGALAM, ERNAKULAMDISTRICT, REPRESENTED BY ITS
MANAGING DIRECTOR JOSE MATHEW, PIN - 686691
BY ADVS.
RAHUL A.
S.ANIL KUMAR (TRIVANDRUM) (K/11/2006)
SABU C.J (K/795/1990)

OTHER PRESENT:

MUHAMMED RAFIQ-SPL.GP

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON
18.03.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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ORDER**Dated this the 18th day of March, 2024**

1. Heard Mr. A. Muhammed Rafiq, learned Special Government Pleader for the review petitioners and Mr. Mayankutty Mather for the respondents.

2. This review petition has been filed seeking review of the Judgment and Order dated 30.11.2023 passed in the batch of writ petitions including W.P.(C) No. 29666 of 2022.

3. This Court after hearing the learned Counsel appearing for the parties, vide the final Judgment and Order under review, held that in cases where the return were filed on or before 31.03.2022 and turnover tax was cleared on or before 30.04.2022 by the FL3 lincencees, for the period from 22.05.2020 to 21.12.2020 and from 15.06.2021 to 25.09.2021 for the financial years 2020-21 and 2021-22, they would not be liable to pay interest for delayed filing of the returns and payment of turnover tax @ 5% on their parcel sales authorised by the Government during the Covid lock down period. This Court considered all the documents which were placed on record and the submissions of both sides.

4. Mr. A. Muhammed Rafiq, learned Special Government Pleader, however submits that there has occurred an error apparent on the face of the record which occasioned the review petitioners to



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seek review of the Judgment and Order dated 30.11.2023 passed by this Court. He further submits that the reduction of tax from 10% to 5% was not limited only in respect of the sale effected by the Bar attached Hotels during the Covid lock down period but, the exemption was granted for the period from 2014-15 to 2015-16 as per the Cabinet Note placed on record as Annexure (A) by which the decision was taken to amend Section 7A of the Kerala General Sales Tax Act, 1963. The exemption from payment of tax up to 5% by the Bar attached Hotels on their parcel sales, would not mean that they were not required to pay the tax @ 10%, but they could have claimed refund of the 5% tax and, therefore, they were liable to pay the interest on delayed payment of turnover tax. He further submits that the proposal to reduce the tax from 10% to 5% in the cabinet decision has to be considered in that respect. Mr. A. Muhammed Rafiq has also placed reliance on Annexure (B) of the review petition which is the decision of the Cabinet. Relevant portion of Annexure (B) reads as under;

“Decision : Proposal (1) of Note accepted.

(2) the suggestion in the note was considered.
It has been decided to extend the time for filing
of the returns till March 31, 2022 and till April
30, 2022 for payment of arrears.”

5. On the other hand, Mr. K. I. Mayankutty Mather, learned Counsel appearing for the respondents submits that the Annexure (A)



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document placed on record i.e. the note put up before the Cabinet for consideration regarding the reduction of turnover tax for the period during lock down from 22.05.2020 to 21.12.2020 and from 15.06.2021 to 25.09.2021 is specific that the Bar attached Hotels and shops were required to pay 5% of the turnover tax as is applicable in respect of the retail outlets run by the Beverages Corporation. In pursuance to the said cabinet note, the cabinet has taken the decision and, thereafter, Exhibit P-2 was issued notifying the rate of turnover tax.

6. Once the notification was issued, the respondents herein have remitted the tax, as per the time extended for filing the return and remittance of tax. This Court has considered every aspect of the matter, the submissions and documents placed on record. There is no error apparent on the face of the record which requires this Court to review its well considered Judgment dated 30.11.2023 in W.P.(C) No. 29666 of 2022 and connected matters.

7. I have considered the submissions. Review jurisdiction is to be exercised in a very limited manner where there is an error apparent on the face of the record. This Court has considered each and every document and the submissions while rendering the Judgment dated 30.11.2023 in W.P.(C) No. 29666 of 2022 and connected matters. Furthermore, these documents were not part of



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the pleadings. Review does not mean rehearing or appeal. There has to be finality to a litigation. This Court, based on the submissions, documents and evidences, has rendered the Judgment sought to be reviewed. Therefore, I find no error apparent on the face of the record which warrants this Court to reconsider this Judgment under review. There is no substance in this review petition and the same is hereby dismissed.

Sd/-

**DINESH KUMAR SINGH
JUDGE**

SJ



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APPENDIX OF RP 185/2024

PETITIONER ANNEXURES

Annexure A	TRUE COPY OF THE NOTE PLACED BEFORE THE COUNCIL OF MINISTERS IN RESPECT OF FILE NO. 201/B3/2021/TD
Annexure B	TRUE COPY OF THE PROCEEDINGS OF THE CABINET MEETING OF MINISTERS HELD ON 23.02.2022 AND ITS TRANSLATION OF FILE NO. 201/B3/2021/TD