2024:KER:10328

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

MONDAY, THE 5TH DAY OF FEBRUARY 2024 / 16TH MAGHA, 1945

RP NO. 81 OF 2024

AGAINST THE JUDGMENT IN WP(C) 32408/2023 OF HIGH COURT OF KERALA

REVIEW PETITIONERS/RESPONDENTS IN WPC:

1. STATE OF KERALA REPRESENTED BY ADDITIONAL CHIEF SECRETARY [TAXES],
ROOM NO. 396, 1ST FLOOR,NEAR SOUTH CONFERENCE HALL,
MAIN BLOCK,SECRETARIATE,THIRUVANANTHAPURAM GPO,
PIN – 695001.

2. STATE TAX OFFICER,
SGST DEPARTMENT, PATHANAMTHITTA, PIN – 689645.

3. COMMISSIONER OF STATE GOODS & SERVICES,
STATE GOODS AND SERVICES TAX DEPARTMENT,
TAX TOWER, KILLIPPALAM,
THIRUVANANTHAPURAM, PIN – 695002.

4. THE STATE TAX OFFICER [ARREAR RECOVERY],
SGST DEPARTMENT, MINI CIVIL STATION,
PATHANAMTHITTA, PIN – 689645.

BY ADV.
SRI. A. MUHAMMED RAFIQ – SPL. GOVERNMENT PLEADER

RESPONDENTS:

SREEVALSAM RESIDENCY,
KULANADA, PATHANAMTHITTA,
REPRESENTED BY ITS PROPRIETOR -
ARUNRAJ PILLAI, PIN – 689503.

BY ADV.
SRI. K. I. MAYANKUTTY MATHER

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON 05.02.2024, ALONG WITH RP.67/2024, 83/2024 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

MONDAY, THE 5TH DAY OF FEBRUARY 2024 / 16TH MAGHA, 1945

RP NO. 67 OF 2024

AGAINST THE JUDGMENT WP(C) 33099/2022 OF HIGH COURT OF KERALA

REVIEW PETITIONERS/RESPONDENTS IN THE WRIT PETITION:

1 THE DEPUTY COMMISSIONER,
STATE GST DEPARTMENT,SPECIAL CIRCLE,
KOTTAYAM, PIN – 688001.

2 THE 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.
SRI. A. MUHAMMED RAFIQ – SPL. GOVERNMENT PLEADER

RESPONDENT/PETITIONER IN THE WRIT PETITION:

DHALIA TOURIST HOME,
PAMPADY,KOTTAYAM,
REPRESENTED BY ITS MANAGING PARTNER,
DOMINIC MATHEW, PIN – 686502

BY ADV.
SRI. RAHUL A.

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON 05.02.2024, ALONG WITH RP.81/2024 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

MONDAY, THE 5TH DAY OF FEBRUARY 2024 / 16TH MAGHA, 1945

RP NO. 83 OF 2024

AGAINST THE JUDGMENT WP(C) 23185/2022 OF HIGH COURT OF KERALA

REVIEW PETITIONERS/RESPONDENTS IN THE WRIT PETITION:

1 THE DEPUTY COMMISSIONER OF STATE TAX,
STATE GST DEPARTMENT,SPECIAL CIRCLE,
PALAKKAD, PIN – 678001.

2 THE EXCISE COMMISSIONER,
FORT,ATTAKULNGARA P. O.,
THIRUVANANTHAPURAM, PIN – 695023.

3 STATE OF KERALA,
REPRESENTED BY ITS SECRETARY,
TAXES DEPARTMENT,GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, PIN – 695001.

BY ADV.
SRI. A. MUHAMMED RAFIQ – SPL. GOVERNMENT PLEADER

RESPONDENT/PETITIONER IN THE WRIT PETITION:

M/S.SNEHA REGENCY/PARAY VILLAGE COUNTY
A UNIT OF KOLLENGODE HERITAGE HOTELS & TOURISM
PVT.LTD ,GOVINDAPURAM ROAD,KOLLENGODE,PALAKKAD,
REPRESENTED BY ITS MANAGING DIRECTOR,
ANN BENNY, PIN – 678506.

BY ADV.
SRI. HARISANKAR V. MENON

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON 05.02.2024, ALONG WITH RP.81/2024 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

MONDAY, THE 5TH DAY OF FEBRUARY 2024 / 16TH MAGHA, 1945

RP NO. 85 OF 2024

AGAINST THE JUDGMENT WP(C) 32074/2022 OF HIGH COURT OF KERALA

REVIEW PETITIONERS/RESPONDENTS IN THE WRIT PETITION:

1 THE COMMISSIONER
STATE GOODS AND SERVICE TAX DEPARTMENT,
THIRUVANANTHAPURAM, PIN – 695001.

2 STATE OF KERALA REPRESENTED BY SECRETARY,
TAXES, SECRETARIAT,THIRUVANANTHAPURAM, PIN – 695001.

3 THE DEPUTY COMMISSIONER,
SPECIAL CIRCLE II, STATE GOODS AND SERVICE TAX
DEPARTMENT, KOZHIKODE, PIN – 673006.

BY ADV.
SRI. A. MUHAMMED RAFIQ- SPL. GOVERNMENT PLEADER

RESPONDENT/PETITIONER IN THE WRIT PETITION:

SAMS PROPERTY DEVELOPERS AND HOTELS P LTD.,
REPRESENTED BY ITS MANAGING DIRECTOR
SHERITA DSOUZA,WESTWAY HOTEL KANNUR ROAD ,
KOZHIKODE, PIN – 673006.

BY ADV.
SRI. K. P. ABDUL AZEES

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON 05.02.2024, ALONG WITH RP.81/2024 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

MONDAY, THE 5TH DAY OF FEBRUARY 2024 / 16TH MAGHA, 1945

RP NO. 88 OF 2024

AGAINST THE JUDGMENT WP(C) 30383/2022 OF HIGH COURT OF KERALA

REVIEW PETITIONERS/RESPONDENTS IN THE WRIT PETITION:

1 STATE TAX OFFICER [WORKS CONTRACT],
STATE GOODS AND SERVICES, TAX DEPARTMENT,
CIVIL STATION, KOTTAYAM, PIN – 686002.

2 COMMISSIONER STATE GOODE & SERVICES,
TAX DEPARTMENT, TAX TOWER, KILLIPPALAM , KARAMANA,
THIRUVANANTHAPURAM, PIN – 695002.

3 STATE OF KERALA REPRESENTED BY ADDITIONAL
CHIEF SECRETARY [TAXES], GOVERNMENT SECRETARIATE,
THIRUVANANTHAPURAM, PIN – 695001.

BY ADV.
SRI. A. MUHAMMED RAFIQ- SPL. GP

RESPONDENT/PETITIONER IN THE WRIT PETITION:

HOTEL ZODIAZ INTERNATIONAL
MAIN ROAD KADUTHURUTHY.KOTTAYAM . REPRESENTED BY
ITS MANAGING PARTNER SRI.JOMON JOSEPH, PIN – 686604

BY ADV.
SRI. AJI V. DEV

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON 05.02.2024, ALONG WITH RP.81/2024 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

MONDAY, THE 5TH DAY OF FEBRUARY 2024 / 16TH MAGHA, 1945

RP NO. 93 OF 2024

AGAINST THE JUDGMENT WP(C) 30377/2022 OF HIGH COURT OF KERALA

REVIEW PETITIONERS/RESPONDENTS IN THE WRIT PETITION:

1 STATE OF KERALA REPRESENTED BY THE SECRETARY TO GOVERNMENT, TAXES DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM, PIN – 695001.

2 DEPUTY COMMISSIONER(ASSMT), SGST DEPARTMENT,SPECIAL CIRCLE, CIVIL STATION,ALAPPUZHA, PIN – 688001.

3 THE COMMISSIONER, KERALA STATE GOODS AND SERVICE TAX DEPARTMENT, 9TH FLOOR,TAX TOWER,KILLIPPALAM, KARAMANA P. O., THIRUVANANTHAPURAM, PIN – 695002.

BY ADV.
SRI. A. MUHAMMED RAFIQ - SPL.GOVERNMENT PLEADER

RESPONDENT/PETITIONER IN THE WRIT PETITION:

HOTEL JEENA AND UDAYA BAR, DANAPADI,HARIPPAD, ALPPUZHA REPRESENTED BY ITS MANAGING PARTNER, C. DILEEPAN, PIN – 690514.

BY ADV.
SRI. BOBBY JOHN

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON 05.02.2024, ALONG WITH RP.81/2024 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

MONDAY, THE 5TH DAY OF FEBRUARY 2024 / 16TH MAGHA, 1945

RP NO. 94 OF 2024

AGAINST THE JUDGMENT WP(C) 12347/2023 OF HIGH COURT OF KERALA

REVIEW PETITIONERS/RESPONDENTS IN THE WRIT PETITION:

1 STATE OF KERALA REPRESENTED BY ADDITIONAL CHIEF SECRETRY (TAXES), ROOM NO.396,FIRST FLOOR, NEAR SOUTH CONFERENCE HALL,MAIN BLOCK, SECRETARIAT, THIRUVANANTHAPURAM,GPO, PIN – 695001.

2 THE STATE TAX OFFICER, KERALA STATE GST DEPARTMENT,KUTHIYATHODU P. O., ALAPPUZHA, PIN – 688533.

3 THE DEPUTY COMMISSIONER, KERALA STATE GST,HEAD POST ROAD, BSNL BHAVAN,ALAPPUZHA, PIN – 688001.

4 THE COMMISSIONER, KERALA STATE GST DEPARTMENT, NINTH FLOOR, TAX TOWER, KILLIPPALAM, KARAMANA P. O., THIRUVANANTHAPURAM, PIN – 695002.

BY ADV.
SRI. A. MUHAMMED RAFIQ- SPL. GOVERNMENT PLEADER

RESPONDENT/PETITIONER IN THE WRIT PETITION:

HOTEL ABAAM PEARL,
NCC JUNCTION,KUTHIYATHODU, THURAVOOR,
ALAPPUZHA REPRESENTED BY ITS DIRECTOR,
PIN – 688532.

BY ADV.
SRI. K. I. MAYANKUTTY MATHER

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON 05.02.2024, ALONG WITH RP.81/2024 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

DINESH KUMAR SINGH, J.

RP Nos. 81, 67, 83, 85, 88, 93 and 94 of 2024
In
W.P.(C) Nos. 32408 and 12347 of 2023, 23185, 30377, 30383, 32074 and 33099 of 2022

Dated this the 5th day of February, 2024

ORDER

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

2. These review petitions have 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. 32408 of 2023.

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 occassioned the review petitioners to 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, the learned Counsel appearing for the respondents submits that the Annexure (A) 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.

5.1. 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.

32408 of 2023 and connected matters.

6. 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. 23969 of 2023 and connected matters. Furthermore, these documents were not part of 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 these review petitions and the same are hereby dismissed.

Sd/-
DINESH KUMAR SINGH
JUDGE

Svn

APPENDIX OF RP 81/2024

PETITIONERS' ANNEXURES

ANNEXURE A	TRUE COPY OF THE NOTE PLACED BEFORE THE CONCIL OF MINISTERS IN RESPECT OF NO. FILE NO. 201/B3/2021/TD.
ANNEXURE B	TRUE COPY OF THE PRCEEDINGS OF THE CABINET MEETING OF MINISTERS, HELD ON 23.02.2022
ANNEXURE C	TRUE COPY OF TRANSLATION OFTHE PROCEEDINGS. MEETING OF MINISTERS HELD ON 23.02.2022

APPENDIX OF RP 67/2024

PETITIONERS' 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
ANNEXURE C	TRUE COPY OF THE TRANSLATION OF THE PROCEEDINGS CABINET MEETING OF MINISTERS HELD ON 23-02-2022

APPENDIX OF RP 83/2024

PETITIONERS' 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
ANNEXURE (C)	TRUE COPY OF THE TRANSLATION OF THE PROCEEDINGS OF THE CABINET MEETING OF MINISTERS,HELD ON 23.02.2022

APPENDIX OF RP 85/2024

PETITIONERS' ANNEXURES

ANNEXURE (A)	TRUE COPY OF THE NOTE PLACED BEFORE THE COUNCIL OF MINISTERS IN RESPECT OF NO.FILE .NO.201/B3/2021/TD
ANNEXURE (B)	TRUE COPY OF THE PROCEEDINGS OF THE CABINET MEETING OF MINISTERS, HELD ON 23.02.2022
ANNEXURE (C)	TRUE COPY OF THE TRANSLATION OF THE PROCEEDINGS OF THE CABINET MEETING OF MINISTERS, HELD ON 23.02.2022

APPENDIX OF RP 88/2024

PETITIONERS' ANNEXURES

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

APPENDIX OF RP 93/2024

PETITIONERS' ANNEXURES

ANNEXURE A	TRUE COPY OF THE NOTE PLACED BEFORE THE COUNCIL OF MINISTERS IN RESPECT FILE NO.201/B3/2021/TD
ANNEXURE B	TRUE COPY OF THE PROCEEDINGS CABINET MEETING OF MINISTERS HELD ON 23/02/2022
ANNEXURE C	TRUE COPY OF THE TRANSLATION OF THE PROCEEDINGS CABINET MEETING OF MINISTERS HELD ON 23/02/2022

APPENDIX OF RP 94/2024

PETITIONERS' ANNEXURES

ANNEXURE A	TRUE COPY OF THE NOTE PLACED BEFORE THE COUNSIL OF MINISTERS, IN RESPECT FINE NO.201/B3/2021/TD
ANNEXURE B	TRUE COPY OF THE PROCEEDINGS OF THE CABINET MEETING OF MINISTERS, HELD ON 23-02-2022 ALONG WITH TRANSLATION OF RELEVANT PORTION IN ENGLISH