

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

TUESDAY, THE 8TH DAY OF MARCH 2022 / 17TH PHALGUNA, 1943

WP(C) NO. 28667 OF 2018

PETITIONERS:

- 1 M/S.DHANAMITHRA KURIES PVT.LTD.
DHANAMITHRA ARCADE, VI/711/1,
THRISSUR ROAD, IRINJALAKUDA, THRISSUR-680121.
REPRESENTED BY ITS MANAGING DIRECTOR SHAJI JOSE
- 2 M/S.KUDUMBAKSHEMAM KURIES PVT LTD
KUTTANCHERY COMPLEX, X-1820-12
HIGH ROAD, THRISSUR-680001.
REPRESENTED BY ITS CHAIRMAN JOM JACOB.
- 3 M/S. PENINSULA CHITS PVT LTD
PENINSULA TOWER, CHRIST COLLEGE JN,
IRINJALAKKUDA, THRISSUR DIST-680121,
REPRESENTED BY ITS CHAIRMAN A.D FRANCIS
- 4 M/S. JANASAKHTI CHITTIES PVT LTD
CHETTUPUZHA BUILDING, 25/1244/15,
KURUPPAM ROAD, THRISSUR,
REPRESENTED BY ITS CHAIRMAN A.P FRANCIS.
- 5 M/S COSMOS CHITS PVT LTD
COSMOS BUILDING, MANNUTHY,
THRISSUR, REPRESENTED BY IS CHAIRMAN T.L JOSE.
- 6 M/S SEEKEND CHITS PVT LTD
2ND FLOOR, NARAYANA COMPLEX,
KOKKALAI, THRISSUR, REPRESENTED BY ITS MANAGING
DIRECTOR-RAJAGOPALAN K.B.
- 7 M/S MONEY LINE KURIES PVT LTD
DOOR NO.144 O & P, JAYAMOHAN SHOPPING CENTER, ALAGAPPA
NAGAR, THRISSUR-680302, REPRESENTED BY ITS CHAIRMAN
BABY P. MANJALI.
- 8 SWADESHI CHITTIES PVT LTD
TC-18/1879, 1ST FLOOR, ADAM BAZAR,
THRISSUR-680001, REPRESENTED BY ITS CHAIRMAN.
- 9 M/S KUTTANELLUR ASHA KURIES PVT LTD
10/1942/1, POST OFFICE ROAD,
THRISSUR-680001, REPRESENTED BY ITS MANAGING DIRECTOR

SREEDHARAN.

- 10 M/S JYOTHIS KURIES INDIA PVT LTD
587, EDATHADAN BUILDING, THALORE PO,
THRISSUR-680306,
REPRESENTED BY ITS CHAIRMAN STEPHAN PEDIYATH.
- 11 M/S JANANANMA KURIES PVT LTD
DOOR NO.12/344/9, POOVATHINGAL ARCADE,
OLLUR, THRISSUR-680306,
REPRESENTED BY ITS MANAGING DIRECTOR-K.V JOHNSON.
- 12 M/S PARAVATTANI KURIES PVT LTD
TC III 29, PARVATTANI, THRISSUR-680005,
REPRESENTED BY ITS CHAIRMAN MAYJO. K. JOHN.
- 13 M/S MUDAPPILAVU KURIES PVT LTD
DOOR NO.VIII/53A, GURUCHAITHANYA SHOPPING COMPLEX, P.O
CHIYYARAM,
THRISSUR, REPRESENTED BY ITS CHAIRMAN A.V RAMESH BABU.
- 14 M/S HI-LINEKURIES PVT LTD
A AND Y COMPLEX, PALLIKULAM ROAD,
(RPAD), THRISSUR-680001,
REPRESENTED BY ITS CHAIRMAN.
- 15 M/S KEYNES AND LOANS PVT LTD
KEYNES COMPLEX, OLD NH -47, PALIYEKKARA, CHITTISERY PO,
THRISSUR-680301, REPRESENTED BY ITS CHAIRMAN.
- 16 M/S SOVEREIGN KURIES PVT LTD
MAR COMMERCIAL CENTER, PALLIKULAM ROAD, (RPAD)
THRISSUR-680001,
REPRESENTED BY ITS CHAIRMAN P.A RAPHEL.
- 17 M/S GOLD LAND KURIES (INDIA) PVT LTD
KAVALLOOR ARCADE, P.O NELLAYI,
THRISSUR-680305,
REPRESENTED BY ITS CHAIRMAN DEVASSYKUTTY A.C.
- 18 M/S PUTHUR PENTA CHITS PVT LTD
204/F, 2ND FLOOR, PENTA CENTER,
P.O PUTHUR, THRISSUR-680014,
REPRESENTED BY ITS CHAIRMAN SHAJI.

BY ADV LINDONS C.DAVIS

RESPONDENTS :

- 1 UNION OF INDIA
 REP BY THE SECRETARY TO GOVERNMENT,
 DEPARTMENT OF REVENUE,
 MINISTRY OF FINANCE, NORTH BLOCK, NEW DELHI - 110001.

- 2 CENTRAL BOARD OF EXCISE AND CUSTOMS
 DEPARTMENT OF REVENUE, MINISTRY OF FINANCE, 156, NORTH
 BLOCK 1, NEW DELHI-110001.

- 3 CHIEF COMMISSIONER OF CENTRAL EXCISE AND CUSTOMS
 CENTRAL REVENUE BUILDING,
 I.S PRESS ROAD, COCHIN-682018.

- 4 ASSISTANT COMMISSIONER OF CENTRAL EXCISE AND SERVICE
 TAX
 PALAKKAD I DIVISION, METTUPALAYAM STREET, P.B NO.33,
 PALAKKAD-678001.

- 5 ASSISTANT COMMISSIONER OF CENTRAL EXCISE AND SERVICE
 TAX
 THRISSUR DIVISION, ST NAGAR, THRISSUR-680001.

BY ADVS.
SREELAL WARRIER
SRI.THOMAS MATHEW NELLIMOOTTIL, SC,

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
08.03.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

BECHU KURIAN THOMAS, J.

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W.P.(C) No.28667 of 2018

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Dated this the 8th day of March, 2022

JUDGMENT

The issue canvassed in this Writ Petition pertains to the demand for service tax for the period 2012-13 and 2013-14.

2. The question whether companies like the petitioners who are engaged in Chitty business are exigible to service tax was considered by the Hon'ble Supreme Court in Union of India and others v. M/s.Margadarshi Chit Funds (P) Ltd. etc (AIR 2017 SC 3730). It was laid down in the said decision that after the amendment brought about to the definition of the word 'service' from 15.06.2015 onwards, service tax is payable on Chit Fund. Relying on the aforesaid decision, a Division Bench of this Court, in its judgment in Writ Appeal No.273 of 2013 held that the amendment brought about to the definition of service cannot be said

to be clarificatory and there can be no retrospective operation given to such amendment. As a corollary it has to be understood that service tax cannot be levied on Chit Funds prior to the amendment, i.e. 15.06.2015.

3. In the light of the undisputed fact that the demand under Ext.P1 to Ext.P22 takes in demands for the period 2012-13 and 2013-14 and is hence unsustainable in law. In the circumstances, it is only appropriate to remand the matter to the adjudicating authority for fresh adjudication in the light of the law as laid down by the Hon'ble Supreme Court and followed by the Division Bench of this Hon'ble Court. For the purpose of such adjudication, necessarily an opportunity of hearing should be offered to the petitioner.

4. In view of the above, Ext.P1 to Ext.P22 shall stand set aside and the 4th and 5th respondents are directed to pass fresh orders, in the light of the judgment in Margadarshi Chit Fund case, (supra) after granting an opportunity of hearing to the petitioners. It is also clarified, that, if any application for refund is filed by the

petitioners, in view of the proposition of law laid down in Margadarshi Chit Fund's case, necessarily, the same shall be considered without further delay in accordance with law.

The writ petition is allowed, as above.

Sd/-

**BECHU KURIAN THOMAS
JUDGE**

ssa/

APPENDIX OF WP(C) 28667/2018

PETITIONERS' EXHIBITS

- EXHIBIT P1** TRUE COPY OF THE ORDER IN ORIGINAL NO.35 TO 36/2017-ST (TCR) DATED 31.03.2017 PASSED BY 4TH RESPONDENT AGAINST 1ST PETITIONER.
- EXHIBIT P2** TRUE COPY OF THE ORDER IN ORIGINAL NO.87/2016-17 ST DATED 23.02.2017 PASSED BY 5TH RESPONDENT AGAINST 2ND PETITIONER.
- EXHIBIT P3** TRUE COPY OF THE ORDER IN ORIGINAL NO.148/2016-17 ST DATED 24.03.2017 PASSED BY THE 5TH RESPONDENT AGAINST 3RD PETITIONER.
- EXHIBIT P4** TRUE COPY OF THE ORDER IN ORIGINAL NO.99/2016-17 ST DATED 23.02.2017 PASSED BY 5TH RESPONDENT AGAINST 4TH PETITIONER.
- EXHIBIT P5** TRUE COPY OF THE ORDER IN ORIGINAL NO.98/2016-17 ST DATED 23.02.2017 PASSED BY 5TH RESPONDENT AGAINST 5TH PETITIONER.
- EXHIBIT P6** TRUE COPY OF THE ORDER IN ORIGINAL NO.126/2016-17 ST DATED 30.03.2017 PASSED BY 5TH RESPONDENT AGAINST 6TH PETITIONER.
- EXHIBIT P7** TRUE COPY OF THE ORDER IN ORIGINAL NO.102/2016-17 ST DATED 23.02.2017 PASSED BY 5TH RESPONDENT AGAINST 7TH PETITIONER.
- EXHIBIT P8** TRUE COPY OF THE ORDER IN ORIGINAL NO.104/2016-17 ST DATED 27.03.2017 PASSED BY 5TH RESPONDENT AGAINST 8TH PETITIONER.
- EXHIBIT P9** TRUE COPY OF THE ORDER IN ORIGINAL NO.39 TO 40/2016-17 ST DATED 31.03.2017 PASSED BY 4TH RESPONDENT AGAINST 9TH PETITIONER.
- EXHIBIT P10** TRUE COPY OF THE ORDER IN ORIGINAL NO.103/2016-17 ST DATED 27.03.2017 PASSED BY 5TH RESPONDENT AGAINST 10TH PETITIONER.
- EXHIBIT P11** TRUE COPY OF THE ORDER IN ORIGINAL NO.27/2016-17 ST DATED 20.03.2017 PASSED BY

4TH RESPONDENT AGAINST 11TH PETITIONER.

- EXHIBIT P12 TRUE COPY OF THE ORDER IN ORIGINAL
NO.85/2016-17 ST DATED 20.03.2017 PASSED BY
5TH RESPONDENT AGAINST 12TH PETITIONER.
- EXHIBIT P13 TRUE COPY OF THE ORDER IN ORIGINAL
NO.31/2017- ST DATED 20.03.2017 PASSED BY 4TH
RESPONDENT AGAINST 13TH PETITIONER.
- EXHIBIT P14 TRUE COPY OF THE ORDER IN ORIGINAL
NO.26/2017-ST DATED 20.03.2017 PASSED BY 4TH
RESPONDENT AGAINST 14TH PETITIONER.
- EXHIBIT P15 TRUE COPY OF THE ORDER IN ORIGINAL
NO.61/2017-ST(TCR) DATED 28.04.2017 PASSED BY
4TH RESPONDENT AGAINST 15TH PETITIONER.
- EXHIBIT P16 TRUE COPY OF ORDER IN ORIGINAL NO.91/2016-17-
ST (TCR) DATED 23.02.2017 PASSED BY 4TH
RESPONDENT AGAINST 15TH PETITIONER.
- EXHIBIT P17 TRUE COPY OF THE ORDER IN ORIGINAL
NO.22/2017-ST(TCR) DATED 20.03.2017 PASSED BY
4TH RESPONDENT AGAINST 16TH PETITIONER.
- EXHIBIT P18 TRUE COPY OF THE ORDER IN ORIGINAL
NO.164/2016-17-ST DATED 26.6.2017 PASSED BY
5TH RESPONDENT AGAINST 17TH PETITIONER.
- EXHIBIT P19 TRUE COPY OF ORDER IN ORIGINAL NO.156-
157/2016-17 -ST DATED 26.04.2017 PASSED BY
THE 5TH RESPONDENT AGAINST 18TH PETITIONER.
- EXHIBIT P20 TRUE COPY OF THE JUDGMENT DATED 14.03.2018 IN
WPC 18700/2016 BY THE HON'BLE HIGH COURT OF
KERALA.
- Exhibit P21 A COPY OF THE JUDGMENT DATED 22.11.2018 IN
WP(C) NO.31340/2016.