

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

Monday, the 8th day of November 2021 / 17th Karthika, 1943
WP(C) NO. 23325 OF 2021(S)

PETITIONER:

KERALA PRADESH GANDHI DARSHANVEDHI (REG.NO.TVM/TC/487/2018),
REPRESENTED BY ITS CHAIRMAN, DR.M.C DILEEPKUMAR, HAVING REGISTERED
OFFICE AT 'SOWPARNIKA', TC 22/2609 KOCHAR ROAD, SASTHAMANGALAM,
THIRUVANANTHAPURAM-695 010.

RESPONDENTS:

1. UNION OF INDIA REPRESENTED BY THE FINANCE SECRETARY, MINISTRY OF FINANCE, GOVERNMENT OF INDIA, NORTH BLOCK, NEW DELHI, 110 001.
2. THE SECRETARY ,MINISTRY OF PETROLEUM & NATURAL GAS, GOVERNMENT OF INDIA, SHASTRI BHAVAN, NEW DELHI-110 001.
3. THE GOODS AND SERVICES TAX COUNCIL REPRESENTED BY ITS SPECIAL SECRETARY, OFFICE OF THE GST COUNCIL SECRETARIAT, 5TH FLOOR, TOWER II, JEEVAN BHARTI BUILDING, JANPATH ROAD, CONNAUGHT PLACE, NEW DELHI-110 001.
4. STATE OF KERALA REPRESENTED BY ITS CHIEF SECRETARY, GOVERNMENT OF KERALA, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001.
5. BHARAT PETROLEUM CORPORATION LIMITED, REPRESENTED BY ITS CHAIRMAN & MANAGING DIRECTOR, BHARAT BHAVAN, 4 AND 6 CURRIMBOY ROAD, BALLARD ESTATE, MUMBAI 400 001.
6. INDIAN OIL CORPORATION LIMITED (IOCL) REPRESENTED BY ITS CHAIRMAN, REFINERIES DIVISION, SCOPE COMPLEX, CORE 2,7, INSTITUTIONAL AREA LODHI ROAD, NEW DELHI 011.
7. HINDUSTAN PETROLEUM CORPORATION LIMITED ,REPRESENTED BY ITS CHAIRMAN, PETROLEUM HOUSE, 17, JAMSHEDJI TATA ROAD, MUMBAI-400 020.

Writ petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to pass an interim order directing the 4th respondent to refrain from charging or levying the sales tax, additional sales tax and cess on petrol and diesel till the same is included under the GST regime.

This petition coming on for admission upon perusing the petition and the affidavit filed in support of WP(C) and upon hearing the arguments of M/S ARUN.B.VARGHESE, AISWARYA V.S., VARNA MANOJ Advocates for the petitioners, M/S SRI.JAGADEESH LAKSHMAN, CGC for R1 & R2, SRI.P.R.SREEJITH, Standing Counsel for R3 and SRI.V.TEKCHAND, SENIOR Government Pleader for R4, the court passed the following:

P.T.0

S.Manikumar, C.J.

&

Shaji P.Chaly, J.

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W.P.(C)No.23325 of 2021-S

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Dated this the 8th day of November, 2021

ORDER

S.Manikumar, C.J.

Pursuant to our directions in W.P.(C)No.12481 of 2021, the Government of Kerala have issued G.O.(Rt)No.546/2021/TAXES dated 11.08.2021 (Exhibit P5) holding that as there is no policy decision of the State Government to recommend to the GST Council to bring petrol and diesel under GST, the request in Exhibit P3 has been declined. G.O.(Rt)No.546/2021/TAXES dated 11.08.2021 reads thus:

“GOVERNMENT OF KERALA

Abstract

Taxes Department - WP(C) No.12481/2021 filed before the Hon'ble High Court of Kerala by Kerala Pradesh Gandhi Darshanvedhi – Judgment Complied – Orders Issued.

TAXES (B) DEPARTMENT

G.O.(RT)No.546/2021/TAXES Dated, Thiruvananthapuram, 11.08.2021

- Read:- 1. Judgment dated 21.06.2021 in WP(C)No.12481/2021.
2. Representation dated 07.06.2021 of Dr.M.C. Dileepkumar (Exhibit P3 in WP(C)No.12481/2021 filed by Kerala Pradesh Gandhi Darshanvedhi).

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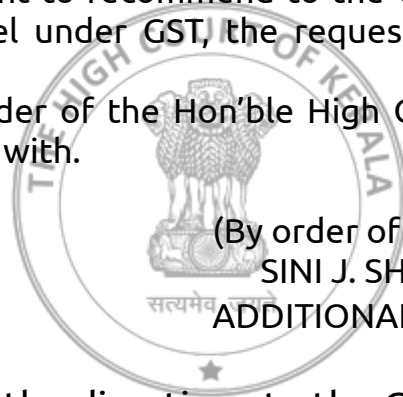
ORDER

As per the judgment in WP(C)No.12481/2021 read as 1st paper above, the Hon'ble High Court of Kerala has ordered the Chief Secretary, Government of Kerala (Respondent 4) to dispose of Exhibit – P3 representation read as 2nd paper above.

2. The prayer of the petitioner to the Government of Kerala in Exhibit P3 is to request the GST Council to include Petrol and Diesel in the GST regime and till a decision is taken by the GST Council, the Government of Kerala may refrain from levying the state tax on Petrol and Diesel.

3. After having examined the representation in detail, Government orders that as there is no policy decision of the State Government to recommend to the GST Council to bring petrol and diesel under GST, the requests in Exhibit P3 are declined.

4. The order of the Hon'ble High Court of Kerala thus stands complied with.



(By order of the Governor)

SINI J. SHUKKOOR

ADDITIONAL SECRETARY."

2. As regards the directions to the GST Council to consider the representation, a meeting is stated to have been convened by the Council and after due deliberation, Council has reviewed that it is not appropriate to do so at this stage.

3. Challenging the decision of the GST Council (Exhibit P6), instant writ petition has been filed on the grounds, inter alia, that it is not a speaking order.

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-:3:-

4. Mr.Jagadeesh Lakshman, learned Central Government Counsel, takes notice for respondents 1 and 2. Mr.P.R.Sreejith, learned standing counsel, takes notice for the Goods and Services Tax Council, represented by its Special Secretary, New Delhi, respondent No.3. Mr.V.Tekchand, learned Senior Government Pleader, takes notice for respondent No.4.

5. Learned standing counsel for the Goods and Services Tax Council shall get appropriate instructions.

Post on 19.11.2021.



Sd/-

**S.Manikumar
Chief Justice**

Sd/-

**Shaji P.Chaly
Judge**

vpv

APPENDIX OF WP(C) 23325/2021

- Exhibit P3** TRUE COPY OF THE REPRESENTATION DATED 7.6.2021
SUBMITTED BY THE WRIT PETITIONER BEFORE THE 4TH
RESPONDENT.
- Exhibit P5** TRUE COPY OF ORDER G.O(RT) NO.546/2021/TAXES DATED
11.8.2021 ISSUED BY GOVERNMENT OF KERALA.
- Exhibit P6** TRUE COPY OF THE RECOMMENDATIONS OF THE 45TH GST
COUNCIL MEETING FORWARDED TO THE EMAIL ID OF THE
CHAIRMAN OF THE WRIT PETITIONER ORGANISATION.

