2024:KER:67655

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

WEDNESDAY, THE 4TH DAY OF SEPTEMBER 2024 / 13TH BHADRA, 1946

WP(C) NO. 24620 OF 2022

PETITIONER:

**M/S.KERALA STATE FINANCIAL ENTERPRISES LTD,
BHADRATHA, MUSEUM ROAD, PB NO.510, THRISSUR,
PIN - 680 020,
REPRESENTED BY MANAGING DIRECTOR OF
M/S KERALA STATE FINANCIAL ENTERPRISES LTD,
SHRI. UBRAMANIAN V.P,
S/O CHATHAPPAN, AGED 59 YEARS,
RESIDING AT CANDLA APARTMENTS,
AMBAKKAD JUNCTION, THRISSUR, PIN – 680 005.**

**BY ADVS.
V RAGHURAMAN (Sr.)
BHANUMURTHY J S
K. S. BHARATHAN
ALPHIN ANTONY
AADITHYAN S.MANNALI
CHRISTINE MATHEW
RANCE R.**

RESPONDENTS:

1 **THE UNION OF INDIA,
MINISTRY OF FINANCE, REPRESENTED BY SECRETARY,
NORTH BLOCK, NEW DELHI, PIN -110 001.**

2 **THE CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS,
REPRESENTED BY CHAIRMAN,ROOM NO. 227-B,
DEPARTMENT OF REVENUE, NORTH BLOCK, NEW DELHI,
PIN – 110 001.**

3 **THE ADDITIONAL DIRECTOR GENERAL,
GOODS AND SERVICES TAX INTELLIGENCE,
KOCHI ZONAL UNIT, CENTRAL EXCISE BHAWAN,
KATHRIKADAVU, KALOOR PO, KOCHI, PIN – 682 017.**

4 THE ADDITIONAL / JOINT COMMISSIONER OF CENTRAL TAX,
KOCHI CENTRAL TAX COMMISSIONERATE,
CENTRAL REVENUE BUILDING, IS PRESS ROAD, KOCHI,
PIN – 682 018.

5 STATE OF KERALA,
REPRESENTED BY ITS SECRETARY, TAXES DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM,
PIN-695 001.

BY ADV SHRI.SREELAL N.WARRIER, SC, GST INTELLIGENCE (DIRECTORATE GENERAL -DGGI)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04.09.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

'C.R'

JUDGMENT

The petitioner is a company incorporated under the Companies Act, 1956, and is wholly owned by the Government of Kerala. It is primarily engaged in the business of conducting chits. It is before this Court challenging Ext.P1 show cause notice dated 21-04-2022 *inter alia* calling upon the petitioner to show cause as to why Goods and Services Tax (GST) amounting to Rs.61,55,21,173/- (Rupees Sixty-one Crores Fifty-five Lakhs Twenty-one Thousand one Hundred Seventy-three only) should not be demanded and recovered under the provisions of Section 74 of the Central Goods and Services Tax/State Goods and Services Tax Acts, 2017, (CGST/SGST Acts), as to why interest should not be demanded on the aforesaid sum and as to why penalty should not be imposed in terms of the provisions contained in the CGST/SGST Acts for violation of the provisions of the law.

2. According to the petitioner, Ext.P1 show cause notice is clearly without jurisdiction and is liable to be quashed in the exercise of the jurisdiction vested in this Court under Article 226 of the Constitution of India. Though Exts. P5 to P8

notifications are challenged, it is submitted for the petitioner that the challenge to those notifications is presently not pressed. There is a further challenge to Ext.P9 notification which relates to the rate of GST for commission received in terms of the provisions contained in Section 21(1)(b) of the Chit Funds Act, 1982 (hereinafter referred to as the '1982 Act'). It is submitted that the said challenge also need not be considered now and can be left open for consideration.

3. Sri. V Raghuraman, the learned Senior Counsel appearing for the petitioner, on the instructions of Adv. K. S. Bharathan would submit that Ext.P1 show cause notice has been issued on the sole basis that interest received/interest collected by the petitioner from defaulting subscribers to a chit should also be the subject matter of a charge of GST under the CGST/SGST Acts. It is submitted that the provisions of the 1982 Act which permits a company engaged in the business of conducting chits to collect interest were the subject matter of the decision of the Supreme Court in ***Oriental Kuries Limited. v. Lissa and Others; (2019) 19 SCC 732***, where it was categorically held that the relationship between a chit subscriber and a chit foreman is a contractual obligation which

creates a debt on the day of subscription. On default taking place, the foreman is entitled to recover the consolidated amount of future subscriptions from the defaulting subscriber in a lump sum. It is submitted that from the decision of the Supreme Court, it is clear that the relationship between the foreman and the chit subscriber is akin to that of a debtor-creditor and therefore even if the transaction could be classified as 'services' for the purposes of the CGST/SGST Acts, vide the entry at Sl.No.27 of Notification No.12/2017-Central Tax (Rate) dated 28-06-2017 the rate of tax on transactions by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services) would be nil. It is submitted that a reading of the judgment of the Supreme Court in ***Oriental Kuries Limited*** *(Supra)* with the terms of the notification referred to above will clearly indicate that any amount received by the petitioner as interest from defaulting subscribers (whether prized or non-prized) would not be liable to GST. The learned Senior Counsel appearing for the petitioner referred to the provisions of Sections 21 and 22 of the 1982 Act as well as to the provisions of the Kerala Chit

Funds Rules, 2012, to apprise this Court of the scheme under which a chit is conducted. The learned Senior Counsel referred to the provisions of Section 15(2) of the CGST/SGST Acts to point out that it is only when interest is received on the consideration received for supply (of either goods or services) would such amount be included in the value of supply for the purposes of the CGST/SGST Acts. It is submitted that Section 9 of the CGST/SGST Acts cannot apply, as the provisions apply only to goods and services. It is submitted that Ext.P1 show cause notice concludes that the transaction between the foreman and the chit subscriber is not a loan transaction. It is submitted that the said assertion in the show cause notice flies in the face of the decision of the Supreme Court in ***Oriental Kuries Limited.*** *(Supra).* The learned Senior Counsel has also referred to the definition of 'goods' in Section 2(52), the definition of 'services' in Section 2(102) of the CGST/SGST Acts and also to the guidance notes of education guide issued by the Central Board of Excise and Customs under the service tax regime to contend that even under the service tax regime transactions in money were outside the scope of 'service'. The learned Senior Counsel referred to the decisions of the

Supreme Court in ***Girdhari Lal Nannelal v. Sales Tax Commissioner, M.P; (1976) 3 SCC 701***, and ***Haleema Zubair, Tropical Traders v. State of Kerala; (2008) 16 SCC 504***, to contend that even if a certain amount is received by a person and that would fall within the definition of income for the purposes of Income Tax Law, the same cannot be automatically treated as amounts received for supply of goods or supply of services unless it were to be proved that such amount is received for the purposes of supply of goods or services. The learned Senior Counsel referred to the judgment of the Supreme Court in ***Commissioner of Service Tax and Others v. Bhayana Builders (Pvt) Ltd. and Others; (2018) 3 SCC 782***, to contend that it is not that any amount received can become part of the value of services rendered unless there is a nexus between the amount charged and the service rendered such amount cannot be the subject matter of any tax under the CGST/SGST Acts. The learned Senior Counsel would conclude by stating that Ext.P1 show cause notice is therefore clearly without jurisdiction and is liable to be quashed.

4. Sri. Sreelal N. Warrier, the learned Senior Standing Counsel appearing for the respondent Department would

vehemently oppose the grant of any relief to the petitioner. He would contend that the question as to whether the transactions which are the subject matter of Ext.P1 show cause notice are transactions for which there could be a levy of GST is a matter that should be left for the consideration of the statutory authorities and the petitioner has not made out any ground to enable it to approach this Court directly and challenge a show cause notice in a writ petition under Article 226 of the Constitution of India. The learned Senior Standing Counsel has referred to the definition of *'consideration'* under Section 2(31), to the definition of *'taxable supply'* under Section 2(108), to Section 7 (which defines the scope of supply), and to Section 15 of the CGST/SGST Acts regarding the value of taxable supply and to the provisions of Sections 2(e), (f), (g), (j), (ja), (jb), (k), (n) and (r) and Sections 14, 20, 21, 22 and 23 of the 1982 Act to contend that there is a clear distinction between the amounts which are to be kept by the foreman for the benefit of the subscribers and the amount which can be realised by the foreman (and appropriated to himself) in terms of the provisions contained in Sections 21 and 22 of the 1982 Act. It is submitted that even if it were to be held that any amount

which is received by the petitioner for the benefit of the subscribers would fall outside the scope of service for the purposes of CGST/SGST Acts, any other amount received by the foreman is clearly a consideration for services rendered. It is pointed out with reference to the provisions of Sections 20, 22 to 25, 22(6), 28, 29 and 30 of the 1982 Act that the act of refraining from removing a subscriber or permitting him to continue after paying interest on the defaulted subscription is clearly an act of service or forbearance on receipt of some payment and this clearly falls within the definition of 'service' under Section 2(102) of the CGST/SGST Acts. It is submitted that the decision of the Supreme Court in ***Oriental Kuries Limited*** *(Supra)* was with reference to the recovery of amounts from defaulting subscribers and the observations therein must be confined to those provisions in the 1982 Act permitting recovery and they cannot be held as defining every aspect of the relationship between the foreman and the subscriber. It is submitted that the provisions of Notification No.12/2017 also do not apply to the petitioner, as the transaction of the petitioner with its subscribers cannot fall within the scope of extending deposits, loans or advances where consideration is

represented by way of interest or discount. In other words, it is submitted that a chit transaction is not a transaction of the nature referred to in Sl.No.27 of Notification No.12/2017 and the petitioner cannot rely on the observations of the Supreme Court in ***Oriental Kuries Limited*** *(Supra)* to establish that by virtue of the notification there can be no charge of GST on the services rendered by the foreman to the subscriber.

5. The learned Senior Counsel appearing for the petitioner, in reply, submits that the observation of the Supreme Court in ***Oriental Kuries Limited*** *(Supra)* clearly defines the nature of the relationship between the foreman and the chit subscriber and the contention of the learned Senior Standing Counsel that those observations are to be read solely with reference to the provisions authorising recovery in the 1982 Act cannot be accepted. He submits that the impugned show cause notice is issued only in relation to interest collected from defaulting subscribers and when the instalment payable by a subscriber is not stated to be consideration for any services rendered, any interest on delayed payment of such amounts also cannot partake the nature of consideration for services rendered. In other words, it is submitted that where

the amount payable by a subscriber towards its subscription does not constitute an amount paid for any services rendered, any interest collected for default in paying the amount on the due date, also cannot be said to be consideration for any services rendered. In support of this contention, the learned Senior Counsel places considerable emphasis on the judgment of the Supreme Court in ***Pratibha Processors and Ors v. Union of India and Ors; (1996) 11 SCC 101***. The learned Senior Counsel also places reliance on the judgment of the Supreme Court in ***Collector of Central Excise, Madras v. M/s. Indian Oxygen Ltd; (1988) 4 SCC 139*** and ***Baroda Electric Meters Ltd v. Collector of Central Excise; (1997) 11 SCC 697*** to contend that any amount received by the petitioner, which does not amount to consideration for the supply of goods or services cannot be brought to levy under the GST.

6. Having considered the submissions made across the bar, I am of the view that the petitioner is entitled to succeed.

Finding on maintainability:-

7. The contention of the Senior Standing Counsel appearing for the respondents that this Court should not

interfere with a show cause notice should be accepted in normal circumstances. However, where on admitted facts, the show cause notice is found to be without jurisdiction, I do not think that an objection raised to the maintainability of the writ petition is sustainable. It is settled law that where the proceedings are challenged as being without jurisdiction, the availability of an alternate mechanism for resolution of disputes (here through adjudication of the show cause notice) is no ground for the Court to refuse to exercise jurisdiction. The judgment of a Constitution Bench of the Supreme Court in ***Calcutta Discount Co. Ltd. v. ITO and Anr, (1961) 41 ITR 191*** is the authority for this proposition. When faced with an argument that the question as to whether re-assessment notices were properly issued under the provisions of Section 34 of the erstwhile Indian Income Tax Act, 1922 should not be investigated in a writ petition under Article 226 of the Constitution of India it was held:-

> *"25. Mr Sastri argued that the question whether the Income Tax Officer had reason to believe that underassessment had occurred "by reason of nondisclosure of material facts" should not be investigated by the courts in an application under Article 226. learned counsel seems to suggest that as*

soon as the Income Tax Officer has reason to believe that there has been underassessment in any year he has jurisdiction to start proceedings under Section 34 by issuing a notice provided 8 years have not elapsed from the end of the year in question, but whether the notices should have been issued within a period of 4 years or not is only a question of limitation which could and should properly be raised in assessment proceedings. It is wholly incorrect however to suppose that this is a question of limitation only not touching the question of jurisdiction. The scheme of the law clearly is that where the Income Tax Officer has reason to believe that an underassessment has resulted from non-disclosure he shall have jurisdiction to start proceedings for re assessment within a period of 8 years; and where he has reason to believe that an underassessment has resulted from other causes he shall have jurisdiction to start proceedings for reassessment within 4 years. Both the conditions, (i) the Income Tax Officer having reason to believe that there has been underassessment, and (ii) his having reason to believe that such underassessment has resulted from nondisclosure of material facts, must co-exist before the Income Tax Officer has jurisdiction to start proceedings after the expiry of 4 years. The argument that the Court ought not to investigate the existence of one of these conditions viz. that the Income Tax

Officer has reason to believe that underassessment has resulted from non-disclosure of material facts cannot therefore be accepted.

26. Mr Sastri next pointed out that at the stage when the Income Tax Officer issued the notices he was not acting judicially or quasi-judicially and so a writ of certiorari or prohibition cannot issue. It is well settled however that though the writ of prohibition or certiorari will not issue against an executive authority, the High Courts have power to issue in a fit case an order prohibiting an executive authority from acting without jurisdiction. Where such action of an executive authority acting without jurisdiction subjects or is likely to subject a person to lengthy proceedings and unnecessary harassment, the High Courts, it is well settled, will issue appropriate orders or directions to prevent such consequences.

27. Mr Sastri mentioned more than once the fact that the Company would have sufficient opportunity to raise this question viz. whether the Income Tax Officer had reason to believe that underassessment had resulted from non-disclosure of material facts, before the Income Tax Officer himself in the assessment proceedings and if unsuccessful there before the appellate officer or the Appellate Tribunal or in the High Court under Section 66(2) of the Indian Income Tax Act. The existence of such alternative

remedy is not however always a sufficient reason for refusing a party quick relief by a writ or order prohibiting an authority acting without jurisdiction from continuing such action.

28. In the present case the Company contends that the conditions precedent for the assumption of jurisdiction under Section 34 were not satisfied and come to the court at the earliest opportunity. There is nothing in its conduct which would justify the refusal of proper relief under Article 226. When the Constitution confers on the High Courts the power to give relief it becomes the duty of the courts to give such relief in fit cases and the courts would be failing to perform their duty if relief is refused without adequate reasons. In the present case we can find no reason for which relief should be refused.

29. We have therefore come to the conclusion that the Company was entitled to an order directing the Income Tax Officer not to take any action on the basis of the three impugned notices."

This question was recently considered by a Division Bench of this Court in ***Prodair Air Products India Private Limited v. State of Kerala; 2023 (3) KHC 1***. It was held:-

"10. Under our Constitution, the power of judicial review is traceable to Art.32 and Art.226 that confer on the Supreme Court and the High Courts the power

to issue prerogative and like writs to protect the citizens from state action that infringes upon their rights. The Constitution being the supreme law of our land, and the rule of law being one of its basic features, the exercise of statutory power has to conform, inter alia, to the requirements of fairness, non - arbitrariness and reasonableness, all of which are integral aspects of the rule of law. Thus, when a litigant approaches a Writ Court, alleging a breach of his rights - be it a constitutional right, a statutory right or a common law right - by an authority empowered by the State, the Court examines the manner in which the decision was arrived at, and in exceptional cases, the decision itself, to see whether it conforms to the requirements mandated by the rule of law.

11. The writ jurisdiction being a discretionary jurisdiction, it is for the constitutional courts to decide whether or not they should exercise their discretion to entertain a writ petition. In that context, it would be apposite to point out that there is a subtle distinction that exists between instances when a Court dismisses a writ petition as 'not maintainable' and when it exercises its discretion against 'entertaining' it. The former is a case where the Court finds that the circumstances are such that it is rendered incapable of even receiving the lis for adjudication whereas the latter is a case where the

Court finds that, while it is competent to adjudicate the lis, the adjudication is better left to other forums that are more suited for the same (M/s Godrej Sara Lee v. Excise & Taxation Officer - cum - Assessing Authority (2023 KHC 6093 : JT (2023) 2 SC 32 : 2023 KHC OnLine 6093 : 2023 SCC OnLine SC 95 : 2023 LiveLaw (SC) 70 : AIR 2023 SC 781). An argument as regards existence of an alternate remedy is one that is aimed at persuading a Court against 'entertaining' a writ petition that is otherwise 'maintainable' before it. While accepting such an argument, the Court essentially finds that notwithstanding the petitioner having made out a sound legal point it would be against public interest for it to entertain and adjudicate the matter.

12. While it is fairly well settled that when confronted with disputed questions of fact, the Writ Court will not ordinarily entertain a writ petition, but leave it to the Civil Courts or statutory forums to adjudicate the matter, it is equally well settled that the existence of an alternate remedy is not a bar to the entertainment of a writ petition where (i) the writ petition seeks the enforcement of any of the fundamental rights, (ii) where there is a violation of the principles of natural justice, (iii) where the order or the proceedings are wholly without jurisdiction or (iv) where the vires of an Act is challenged (Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Others, 1998

KHC 1225 : 1998 (8) SCC 1 : AIR 1999 SC 22). That apart, as observed in State of UP and Others v. Indian Hume Pipe Co. Ltd., 1977 KHC 585 : 1977 (2) SCC 724 : AIR 1977 SC 1132 : 1977 (39) STC 355 : 1977 (3) SCR 120 and UOI v. State of Haryana, 2000 KHC 1655 : 2000 (10) SCC 482, and re - iterated most recently in M/s Godrej Sara Lee Ltd v. Excise & Taxation Officer - cum - Assessing Authority, JT (2023) 2 SC 32, where the controversy is a purely legal one and it does not involve disputed questions of fact but only questions of law, then it should ideally be decided by the High Court instead of dismissing the writ petition on the ground of an alternate remedy being available. The need for upholding the rule of law would also mandate that the High Court decide the matter in situations where the exercise of statutory power does not conform, inter alia, to the requirements of fairness, non - arbitrariness and reasonableness and therefore falls foul of the culture of justification that is seen as a necessary and essential feature of administrative decision making (Akshay N. Patel v. RBI, 2021 KHC 6791 : 2022 (3) SCC 694 : 2021 KHC OnLine 6791 : 2021 SCC OnLine SC 1180). The said feature requires the decision of the administrative authority to demonstrate responsiveness, justification and demonstrated expertise. Responsiveness refers to the requirement that the reasons given by the decision maker must

> *respond to the central issues and concerns raised by the parties by 'listening' rather than merely 'hearing' the parties. Justification refers to the principle that the exercise of public power must be justified, intelligible and transparent, not in the abstract, but to the individuals subject to it. Demonstrated expertise refers to the requirement of the decision maker establishing the reasonableness of his decision by demonstrating therein his experience and expertise. Added to the above is the requirement of a reviewing Court to understand the contextual constraints, if any, under which the decision under review was rendered by the administrative authority while assessing its reasonableness (Paul Daly, 'Vavilov and the Culture of Justification in Administrative Law' - https: / / www.administrativelawmatters.com / blog / 2020/04/20 / vavilov - and - the - culture - of - justification - in - administrative - law /).”*

In the facts of the present case, I am clear in mind, on the authority of the judgment of the Supreme Court in ***Oriental Kuries Limited*** *(Supra)* and the provisions of Notification No.12 of 2017 that the issuance of a show cause notice alleging that the transactions, which are the subject matter of Ext.P1 show cause notice, should be subject to a levy of GST is clearly without jurisdiction. There are no disputed questions of fact.

The matter can be decided purely as a matter of law. Therefore, the fact that this writ petition has been filed challenging a show cause notice is no ground to refuse the exercise of jurisdiction under Article 226 of the Constitution of India.

Analysis of other contentions:-

8. An analysis of the contentions taken before this Court must start with a reference to Section 21 of the 1982 Act, which reads as follows:

> *"**21**. **Rights of foreman**.—(1) The foreman shall be entitled,—*
>
> *(a) in the absence of any provision in the chit agreement to the contrary, to obtain the gross chit amount at the first instalment without deduction of the discount specified in the chit agreement, subject to the condition that he shall subscribe to a ticket in the chit:*
>
> *Provided that in a case where the foreman has subscribed to more than one ticket, he shall not be eligible to obtain more than one gross chit amount in a chit without discount;*
>
> *(b) to such amount not exceeding seven per*

cent of the gross chit amount as may be fixed in the chit agreement, by way of commission, remuneration or for meeting the expenses of running the chit;

(c) to interest and penalty, if any, payable on any default in the payment of instalments and to such other amounts as may be payable to him under the provisions of the chit agreement;

(d) to receive and realise all subscriptions from the subscribers and to distribute the net chit amount to the prized subscribers;

(e) to demand sufficient security from any prized subscriber for the due payment of future subscriptions payable by him.

***Explanation**.—A security shall be deemed to be sufficient for the purposes of this clause if its value exceeds by one-third, or of it consists of immovable properties, the value of which exceeds by one-half, of the amount due from the prized subscriber;*

(f) to substitute subscribers in place of defaulting subscribers;

(fa) to exercise his right to lien against the credit balance in other non-prized chits; and

(g) to do all other acts that may be necessary for the due and proper conduct of the chit.

(2) Where any dispute arises with regard to the value of the property offered as security under clause (e) of sub-section (1), it shall be referred to the Registrar for arbitration under section 64."

A reading of sub-sections 21(1)(b) and (c) of the 1982 Act indicates that the foreman of a chit is entitled to an amount not exceeding 7% of the chit amount as may be fixed in the chit agreement, by way of commission, remuneration or for meeting the expenses of running the chit. He is also entitled, under the provisions of Section 21(1)(c) of the 1982 Act, to interest and penalty, if any, payable on any default in the payment of instalments and to such other amounts as may be payable to him under the provisions of the chit agreement. The provisions of sub-section (4) of Section 22 of the 1982 Act no doubt provide that the foreman shall not appropriate to himself any amount in excess of what he is entitled to under clause (b) or clause (c) of sub-section (1) of Section 21. However, I am unable to read into the above provisions a distinction as is sought

to be established by the learned Senior Standing Counsel appearing for the Revenue that amounts received by the foreman other than such of those amounts which would go to the benefit to the subscribers, are amounts received for the provisions of services. Even if I take into consideration the provisions of Section 28 of the 1982 Act and hold that there is a discretion in the hands of the foreman to either remove a defaulting subscriber or to retain him after accepting from the defaulting subscriber, the amount of subscription together with any interest as contemplated by the provisions of Section 21(1)(c) of the 1982 Act, the same does not come to the aid of the Revenue in this case. In ***Oriental Kuries Limited*** *(Supra)* it was held:-

> *"5. In Janardhana Mallan, a five-Judge Bench of the Kerala High Court overruled the decision in P.K. Achuthan, and held that it would not be possible to say that on entering into the chitty agreement a debt is incurred by the subscriber for the amount of all the future instalments, and in respect of such amount there is a debtor-creditor relationship. The chitty variola embodies a promise to pay on future dates. It is not a promise to repay an existing debt, but in*

discharge of a contractual obligation. The prize amount is not received as a loan, but by virtue of the terms of the contract between the parties.

xxxx xxxx xxxx

9. The Division Bench in the impugned judgment dated 15-1-2009, held that by entering into a chitty agreement, a debt is not created at once by the subscriber with respect to the amount of all the future instalments. The chitty agreement embodies a promise to pay and discharge a contractual obligation, and not a promise to repay an existing debt.

10. We do not agree with the view expressed by the Division Bench. When a prized subscriber is allowed to draw the chit amount, which is in the nature of a grant of a loan to him from the common fund in the hands of the foreman, with the concessional facility of effecting repayment in instalments; this is subject to the stipulation that the concession is liable to be withdrawn in the event of default being committed in payment of any of the instalments. The chit subscriber at the time of subscription, incurs a debt which is payable in instalments. If a subscriber is permitted to withdraw the collected sum on his turn, without being bound to pay the future instalments, it would jeopardise the interest of all other subscribers,

and the entire mechanism of the chit fund system would collapse.

11. A perusal of the provisions of Chapter V of the 1982 Act makes it clear that if a prized subscriber defaults in making payment of an instalment, the chit foreman has the right to recover the amount covering all future subscriptions from the defaulting subscriber as a consolidated amount. Section 32 of the 1982 Act empowers the foreman to recover the consolidated payment of all future subscriptions forthwith in the case of a default. Chapter V of the Chit Funds Act, 1982 prescribes the rights and duties of prized subscribers. Sections 31 to 33 in Chapter V read as follows:

"......"

12. The object is to empower the foreman to recover the amount in emphasis in lump sum from a defaulting subscriber, so as to secure the interest of the other subscribers, and ensure smooth functioning of the chit fund. Such a provision would not amount to a penalty.

13. The relationship between the foreman and the subscribers in a chit fund transaction is of such a nature that there is a necessity and justification for making stringent provisions to safeguard the interest of the other subscribers, and the foreman. If a prized

Subscriber defaults in payment of his subscriptions, the foreman will be obliged to obtain the equivalent amount from other sources, to meet the obligations for payment of the chit amount to the other members, who prize the chit on subsequent draws. For raising such an amount, the foreman may be required to pay high rates of interest.

14. The stipulation of empowering the foreman to recover the entire balance amount in a lump sum, in the event of default being committed by a prized subscriber, is to ensure punctual payment by each of the individual subscribers of the chit fund. Without punctual payments, the system would become unworkable, and the foreman would not be in a position to discharge his obligations to the other members of the chit fund.

15. In view of the aforesaid discussion, the relationship between a chit subscriber and the chit foreman is a contractual obligation, which creates a debt on the day of subscription. On default taking place, the foreman is entitled to recover the consolidated amount of future subscriptions from the defaulting subscriber in a lump sum."

The learned Senior Standing Counsel appearing for the Revenue may be right in contending that the observations

of the Supreme Court were in relation to the right of the foreman to recover amounts from a defaulting subscriber. However, it is not possible to read the finding of the Supreme Court which defines and explains the relationship between the foreman and the subscriber, referring to the statutory provisions as being confined to the provisions relating to recovery in the 1982 Act.

9. When the observations of the Supreme Court are taken to clearly define the relationship between the foreman and the subscriber, the transaction clearly falls within the terms of Notification No.12 of 2017, which at Sl.No.27 reads thus:-

Sl. No.	***Chapter, Section, Heading, Group for Service Code (Tariff)***	***Description of Services***	***Rate (percent)***	***Condition***
27	*Heading 9971*	*Services by way of-* *(a) extending deposits, loans or advances in so far as the consideration is represented by*	*Nil*	*Nil*

		way of interest or discount(other than interest involved in credit card services); *(b) inter se sale or purchase of foreign currency amongst banks or authorised dealers of foreign exchange or amongst banks and such dealers.*		

Therefore, it is clear that when the amounts received by the petitioner that the Revenue asserts are consideration for services are actually consideration represented by way of interest for extending deposits, loans, and advances, the transaction would not be subject to any rate of tax in terms of Notification No.12 of 2017.

10. There is yet another reason as to why I must hold in favour of the petitioner. Section 15 of the CGST/SGST Acts defines the value of taxable supply. This provision is important for the purposes of this case on account of Section 15 (2) (d) which reads thus:-

*" **15. Value of Taxable Supply** –*

(1) xxxx xxxx xxxx

(2) The value of supply shall include -

xxxx xxxx xxxx

(d) interest or late fee or penalty for delayed payment of any consideration for any supply"

Sub-section (2) of Section 15 thus provides that *"……the value of supply shall include….."* and is in that manner clarificatory of the provisions contained in sub-section (1) of Section 15. However, it is to be noted that it is only when interest or late fee or penalty is levied on account of delayed payment of any consideration for supply that such interest, late fee or penalty would form part of the value of taxable supply. In other words, this provision makes it abundantly clear that when interest or late fee or penalty is not on account of delayed payment of any consideration for supply the said amount of interest, late fee or penalty would not partake the nature of consideration for supply. I find that the observations of the Supreme Court in ***Pratibha Processors*** *(Supra)* clearly indicate that in so

far as interest is concerned, the amount charged as interest takes colour from the principal amount upon which such interest is charged and it has no independent existence. In the facts of the present case, the Revenue has no case that the payment of subscription by a subscriber is payment for services rendered by the foreman. Therefore, any interest charged by the foreman on account of delayed payment of subscription cannot partake the nature of consideration for the supply of services. Paragraph 14 of the ***Pratibha Processors*** *(Supra)* reads thus:-

> *"14. In the above backdrop, let us consider the scope and content of Section 61(2) of the Act as it existed at the relevant time. Section 61(1) prescribes the period during which the goods imported may remain in the warehouse. The normal period in different cases are provided therein. Extension of time in special cases is also provided. If the goods imported remain in warehouse beyond the period provided or extended under Section 61(1), the consequences are specified in Section 61(2) of the Act. As per the provisions of the Act duty is payable (only) when the goods are cleared. If the goods are not cleared within the time*

granted under Section 61(1) of the Act, and the goods are cleared later, the payment of duty exigible on the goods gets automatically delayed. It is to meet the said contingency. Section 61(2) provides that if the goods warehoused are cleared beyond the lime specified or granted under Section 61(1) of the Act, interest not exceeding 18% per annum shall be payable on the amount of duty on the warehoused goods. It is implicit from the language of Section 61(2) of the Act that the interest shall be payable on the amount of duty "payable or due" on the warehoused goods for the period from the expiry of period specified or granted till the date of clearance of the goods from the warehouse. In this case, on the date of clearance of the goods, no duty is payable. The goods are not exigible to duty at that time. Calculation of interest is always on the principal amount. The "interest" payable under Section 61(1)(2) of the Act is a mere "accessory of the principal and if the principal is not recoverable/payable, so is the interest on it. This is a basic principle based on common sense and also flowing from the language of Section 61(1)(2) of the Act. The principal amount herein is the amount of duty payable on clearance of goods. When such principal amount is nil because of the exemption, a fortiori, interest payable is also nil. In other words, we are clear in our mind that the interest is necessarily linked to the duty payable. The

> *interest provided under Section 61(2) has no independent or separate existence. When the goods are wholly exempted from the payment of duty on removal from the warehouse, one cannot be saddled with the liability to pay interest on a non-existing duty. Payment of interest under Section 61(2) is solely dependent upon the exigibility or factual liability to pay the principal amount, that is, the duty on the warehoused goods at the time of delivery. At that time, the principal amount (duty) is not payable due to exemption. So, there is no occasion or basis to levy any interest, either. We hold accordingly."*

The observations of the Supreme Court in ***Girdhari Lal Nannelal*** *(Supra)* and ***Haleema Zubair*** *(Supra)* also indicate that unless there is a nexus between the amounts received by a person and the actual supply of goods, the amount cannot be attributed as consideration for the supply of goods. The decisions of the Supreme Court in ***Indian Oxygen*** *(Supra)* and ***Baroda Electric Meters*** *(Supra)* are also authorities for the proposition that it is not any income that would be the subject matter of levy under GST law unless it could be clearly shown that the amount was received either for the supply of goods or for the

supply of services. As already observed, Ext.P1 show cause notice is confined to the interest received from the defaulting subscribers. In such circumstances, for reasons indicated, it must be held that the amount of interest received by the foreman of a chit on defaulting subscriptions cannot be said to be amounts received as consideration for the supply of services.

For all the aforesaid reasons, this writ petition is to be allowed. Accordingly, this writ petition is allowed. It is declared that Ext.P1 show cause notice is issued without jurisdiction. It is accordingly quashed. In view of the submission of the learned Senior Counsel for the petitioner, the challenge to Exts. P5 to P8 notifications are dismissed as not pressed and the challenge to Ext.P9 notification is left open for adjudication in an appropriate case.

Sd/-
GOPINATH P.
JUDGE

ats/bng

APPENDIX OF WP(C) 24620/2022

PETITIONER'S EXHIBITS

Exhibit P1	**TRUE COPY OF THE SHOW CAUSE NOTICE ('SCN') DATED 21.04.2022 BEARING NO. 08/2022-23.**
Exhibit2	**TRUE COPY OF THE CHIT AGREEMENT DATED NIL.**
Exhibit3	**TRUE COPY OF THE RELEVANT PROVISIONS OF THE CHIT FUNDS ACT 1982 AND DATED NIL.**
Exhibit4	**TRUE COPY OF THE RELEVANT PROVISIONS OF THE KERALA CHIT FUND RULES, 2012 DATED NIL.**
Exhibit P5	**TRUE COPY OF THE OF NOTIFICATION 14/2017-CT DATED 01.07.2017.**
Exhibit P6	**TRUE COPY OF THE CIRCULAR NO. 3/3/2017-GST DATED 05.07.2017.**
Exhibit P7	**TRUE COPY OF THE CIRCULAR NO. 31/05/2018-GST DATED 09.02.2018.**
Exhibit P8	**TRUE COPY OF THE AMENDED CIRCULAR NO. 169/01/2022-GST DATED 12.03.2022.**
Exhibit P9	**TRUE COPY OF THE NOTIFICATION NO. 11/2017-CT(R) DATED 28.06.2017.**
Exhibit P10	**TRUE COPY OF THE SECTION 3 OF THE CGST ACT DATED NIL.**
Exhibit P11	**TRUE COPY OF THE SECTION 2 OF THE CGST ACT DATED NIL.**
Exhibit P12	**TRUE COPY OF THE SECTION 4 OF THE CGST ACT DATED NIL.**
Exhibit P13	**TRUE COPY OF THE SECTION 5 OF THE CGST ACT DATED NIL.**
Exhibit14	**TRUE COPY OF THE CORRIGENDUM NO. GSR 533(E) DATED 29.07.2019.**

Exhibit P15	**TRUE COPY OF NOTIFICATION 2/2017-CT DATED 19.06.2017.**
Exhibit P16	**RUE COPY OF SECTION 74 OF THE CGST ACT DATED NIL.**
Exhibit P17	**TRUE COPY OF SECTION 168 OF THE CGST ACT.**
Exhibit P18	**TRUE COPY OF THE SL NO. 27 OF THE NOTIFICATION NO. 12/2017-CT(R) DATED 28-06-2017**
Exhibit P19	**TRUE COPY OF THE REPLY TO EXHIBIT P1 SHOW CAUSE NOTICE DATED 12.08.2022**