



WA NO. 1934 OF 2024
&
WA NO. 1962 OF 2024

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2025:KER:6016

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE EASWARAN S.

MONDAY, THE 27TH DAY OF JANUARY 2025 / 7TH MAGHA, 1946

WA NO. 1934 OF 2024

AGAINST THE JUDGMENT DATED 05.04.2024 IN WP(C) NO.7952 OF
2024 OF HIGH COURT OF KERALA

APPELLANTS/PETITIONERS:

1 CENTRE C EDTECH PRIVATE LIMITED,
6TH FLOOR, TC NO.81/1646, AXIS TOWER, SS KOVIL ROAD,
THAMPANOR, THIRUVANANTHAPURAM, KERALA , REPRESENTED BY
ITS DIRECTOR, DHANYA V.S, PIN - 695001

2 DHANYA V.S,
AGED 36 YEARS
J.V HOUSE, NJANAPRAKASAM ROAD, PERUKAVU. P.O, PEYAD,
THIRUVANANTHAPURAM, PIN - 695573

BY ADVS.
SRI.ADITYA UNNIKRISHNAN
SRI.ANIL D. NAIR (SR.)
SMT.TELMA RAJU

RESPONDENTS/RESPONDENTS:

1 THE INTELLIGENCE OFFICER,
OFFIINTELLIGENCE UNIT, STATE GOODS AND SERVICE TAX
DEPARTMENT, KERALA, THIRUVANANTHAPURAM, PIN - 695018

2 THE INTELLIGENCE OFFICER,
PATHANAMTHITTA UNIT, MINI CIVIL STATION, GST
DEPARTMENT, PATHANAMTHITTA, PIN - 689645



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3 ADDL.R3 IMPEADED-
 THE DEPUTY DIRECTOR OF INCOME TAX INVESTIGATION,
 THIRUVANANTHAPURAM. IS SUO MOTU IMPEADED AS ADDITIONAL
 3RD RESPONDENT AS PER ORDER DATED 16/12/2024 IN
 W.A.NO.1934/2024.

 BY GOVERNMENT PLEADER SMT.RESMITHA RAMACHANDRAN,
 BY SENIOR GOVERNMENT PLEADER SRI.SHAJAHAN V.K
 SRI.JOSE JOSEPH, SC

 THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 27.01.2025,
ALONG WITH WA.1962/2024, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



WA NO. 1934 OF 2024
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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE EASWARAN S.

MONDAY, THE 27TH DAY OF JANUARY 2025 / 7TH MAGHA, 1946

WA NO. 1962 OF 2024

AGAINST THE JUDGMENT DATED 05.04.2024 IN WP(C) NO.7967 OF
2024 OF HIGH COURT OF KERALA

APPELLANT/PETITIONER:

GAYATHRI. J.A,
AGED 33 YEARS
TC.3/444-1, KRISHNA, RESHMI NAGAR RNRA-62,
KALLARAMOOLA, MUTTADA P.O, TRIVANDRUM,
PIN - 695025

BY ADVS.
SRI.ADITYA UNNIKRISHNAN
SRI.ANIL D. NAIR (SR.)

RESPONDENTS/RESPONDENTS:

- 1 THE INTELLIGENCE OFFICER,
INTELLIGENCE UNIT, STATE GOODS AND SERVICE TAX
DEPARTMENT, ALAPPUZHA, KERALA, PIN - 688013
- 2 THE INTELLIGENCE OFFICER,
PATHANAMTHITTA UNIT, MINI CIVIL STATION, GST
DEPARTMENT, PATHANAMTHITTA, PIN - 689645
- 3 ADDL.R3 IMPEADED
THE DEPUTY DIRECTOR OF INCOME TAX INVESTIGATION
THIRUVANANTHAPURAM



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IS SUO MOTU IMPEADED AS ADDL R3 VIDE ORDER DATED
16/12/2024 IN WA 1962/2024

BY GOVERNMENT PLEADER SMT.RESMITHA RAMACHANDRAN,
BY SENIOR GOVERNMENT PLEADER SRI.SHAJAHAN V.K
SRI.JOSE JOSEPH, SC

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 27.01.2025,
ALONG WITH WA.1934/2024, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



JUDGMENT

Dr. A.K.Jayasankaran Nambiar, J.

As both these Writ appeals arise from a common order of the learned Single Judge in WP(C). Nos.7967 of 2024 and 7952 of 2024, they are taken up together for consideration and disposed by this common judgment.

2. In these Writ Appeals the appellants are aggrieved by the seizure of cash from their premises by the officers attached to the GST Department of the State in the course of proceedings initiated under Section 74 of the CGST/SGST Act. They submit that the cash so seized was later handed over to the Income Tax Department after intimating the said Department of the seizure of cash. The Writ Petitions were filed by the appellants herein seeking a direction to return the seized cash to them since the GST Department did not have the power to seize cash from the premises of any dealer/service provider unless the cash itself formed part of the stock in trade of the dealer/service provider.

3. Before the learned Single Judge, the respondent State filed a statement wherein it was stated that a total amount of Rs.39,70,760/- (Rs.29,11,900/- + Rs.10,58,860/-) was seized from the appellants herein and was kept in safe custody at the District Treasury, Pathanamthitta, on 21.09.2023. It was also averred that the said amount was taken back on 26.03.2024, in the presence of the Income Tax officials and two Kerala



Government Department officials, and the cash was then handed over to the Income Tax Department, in pursuance to the requisition sent by the said Department under Section 132A of the Income Tax Act, 1961.

4. Finding that the seized cash was now with the Income Tax Department, the learned Single Judge directed the appellants herein to approach the Income Tax Department for a release of the cash, and further, directed the GST Department to consider the reply, if any, filed by the appellants to the notice issued to them under Section 74(1) of the CGST/SGST Act and proceed with the adjudication under the said Act. With the aforesaid directions, the Writ Petitions were disposed by the learned Single Judge.

5. In the appeals before us, the contention of the appellants is essentially that, inasmuch as the initial seizure of the cash by the GST Department of the State was illegal and without jurisdiction, the subsequent handing over of the seized cash to the Income Tax Department, even if pursuant to a notice under Section 132A of the Income Tax Act, would not detract from the fact that the continued withholding of the money, by the respondent authorities, was illegal.

6. We have heard the learned Senior counsel Sri.Anil D.Nair assisted by Sri.Aditya Unnikrishnan for the appellants, Sri.Shamsudheen, the learned Senior Government Pleader and Smt. Resmitha Ramachandran, the learned Government Pleader for the State and Sri.Jose Joseph the learned Standing



counsel for the Income Tax Department.

7. On a consideration of the rival submissions, we find force in the submissions of the learned Senior counsel for the appellants that the initial seizure of cash from the premises of the appellant being illegal, the continued retention of it by the GST Department of the State, and the handing over of the cash to the Income Tax Department, cannot be seen as legal acts merely because the money was now handed over to the Income Tax Department pursuant to a requisition sent by them under Section 132A of the IT Act. The initial seizure of the cash by the GST Department was blatantly illegal since it was without the authority of law. This salutary principle that prevents the expropriation of property or tax from a citizen without the authority of law finds expression in Articles 265 and Article 300A of the Constitution of India. As a matter of fact, a Division Bench of this Court in **Sabu George & Ors. v. Sales Tax Officer (IB) & Ors. [(2023) 153 Taxman.com 46]**, had clearly found that the power of the GST Authorities to seize any “thing” while functioning under the provisions of the statute cannot be seen as permitting a seizure of cash from the premises of a dealer more so when the cash in question was not part of the stock in trade of the business conducted by the dealer. This view of the Division Bench has since been confirmed by the Supreme Court in **Sales Tax Officer (IB) & Ors. V Sabu George & Ors. [(2023) 153 Taxman.com 138]**. We are therefore surprised at the action of the State GST department in resorting to such conduct despite the existence of binding precedents that forbid them from doing so.



8. We have no hesitation to hold that the cash amount seized from the premises of the appellants cannot be retained either by the GST Department of the State or the Income Tax Department prior to a finalisation of respective proceedings initiated by them. Accordingly, we dispose these Writ Appeals with the following directions:

i. The Income Tax Department (additional 3rd respondent in both the appeals) shall forthwith, and at any rate not later than 10 days from today, release the amount of Rs.10,58,860/- to the appellant in Writ Appeal No. 1934 of 2024 and Rs.29,11,900/- to the appellant in WA No.1962 of 2024 by crediting the amounts in their respective bank accounts.

ii. The proceedings under Section 74 (1) of the CGST/SGST Act as against the appellants shall continue from the stage at which they presently stand and shall be completed after giving the appellants an opportunity of being heard.

iii. The proceedings initiated by the Income Tax Department under Section 132A for the purposes of completing an assessment under Section 153A, 153C shall also proceed from the stage at which they presently stand without treating the



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seizure of the cash amounts aforementioned as being pursuant
to a valid requisition issued under Section 132A of the IT Act.

The Writ Appeals are disposed as above.

Sd/-

DR. A.K.JAYASANKARAN NAMBIAR
JUDGE

Sd/-

EASWARAN S.
JUDGE

mns