

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No(s).4907/2013

(From the judgement and order dated 01/01/2013 in STR No.116/2012 of The HIGH COURT OF KERALA AT ERNAKULAM)

M/S UNITED DISTILLERIES

Petitioner(s)

VERSUS

STATE OF KERALA

Respondent(s)

(With appln(s) for permission to file lengthy list of dates and with prayer for interim relief and office report)

WITH

C.A. NO. 5726/2011

C.A. Nos. 8485-8491/2010

(With appln. for stay and office report)

C.A. Nos 8492-8500/2010

(With appln. for permission to file addl. documents and office report)

C.A. Nos. 1937-1940/2011

(With office report)

C.A. Nos. 4617-4618/2012

(With prayer for interim relief and office report)

Date: 31/01/2013 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE H.L. DATTU

HON'BLE MR. JUSTICE RANJAN GOGOI

For Petitioner(s)
CA 4907/2013

Mr. V. Giri, Sr. Adv.
Mr. E.M.S. Anam, Adv.

Mr. V. Giri, Sr. Adv.
Mr. Harshad V. Hameed, Adv.
Mr. Neeraj Shekhar, Adv.

Mr. V. Giri, Sr. Adv.
Mr. Dilip Pillai, Adv.
Mr. Ajay K Jain, Adv.
Mr. Mohd. Sadique T.A., Adv.
Ms. Neelam Saini, Adv.

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Mr. Sanjeev Kumar Singh, Adv.
Mr. Siddhartha Chowdhury, Adv.

Mr. Wills Mathews, Adv.
Ms. Amrita Jayan, Adv.
Mr. Robin Raju, Adv.

For Respondent(s) Ms. Bina Madhavan, Adv.

Mr. M.T. George, Adv.
Ms. Kavitha K.T., Adv.

UPON hearing counsel the Court made the following
O R D E R

SLP (C) No. 4907/2013

Shri V. Giri, learned senior counsel appearing for the petitioner would submit that at this stage he would not press for an order by this Court on the issue as to whether the Deputy Commissioner, Commercial Taxes, in exercise of his powers under Section 35 of the Kerala General Sales Tax Act, 1957, (for short, "the Act") is competent or not to initiate suo motu proceedings to annul an order made under Section 23B of the Act.

The learned senior counsel brings to our notice the orders passed by this Court in M/s. Kaycee Distilleries vs. State of Kerala and submits that since the issue raised in this special leave petition is similar to the issue that is pending for consideration and decision of this Court, notice may be

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issued to the respondent.

The Deputy Commissioner, Commercial Taxes, by exercising his powers under Section 35 of the Act has taken exception to the order passed by the assessing authority under Section 23A of the Act and therefore, has remanded the matter back to the assessing authority to complete the assessment proceedings in accordance with the provisions of the Act. It is at this stage, the petitioner is before us in this special leave petition.

In our view, we cannot grant a blanket stay order in favour of the petitioner. Therefore, we direct the assessing authority to complete the assessment as directed by the Deputy Commissioner, Commercial Taxes, in his order dated 11.05.11 read with rectification order dated 19.05.11, as expeditiously as possible, but not later than, two months from today. After completing such order, the assessing authority will fasten the liability on the petitioner and direct the petitioner to pay the turn over tax and the penalty, if any, except the interest part of it.

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The notice of the special leave petition is confined only to the challenge of the petitioner insofar as the levy of interest under Section 23 (3) and 23(3A) of the Act is concerned.

Ordered accordingly.

C.As.5726/2011,8485-8491/2010,8492-8500/2010, 1937-1940/2011,
4617-4618/2012

Adjourned.

| [Charanjeet Kaur] | [Vinod Kulvi] |
| Court Master | | Court Master |