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WP(C) NO. 12864 OF 2024

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

FRIDAY, THE 22<sup>ND</sup> DAY OF NOVEMBER 2024 / 1ST AGRAHAYANA, 1946

WP(C) NO. 12864 OF 2024

PETITIONER:

KERALA INFRASTRUCTURE AND TECHNOLOGY FOR  
EDUCATION, SCERT BUILDING, POOJAPPURA, KARAMANA,  
POOJAPPURA ROAD, THIRUVANANTHAPURAM THROUGH ITS  
VICE CHAIRMAN AND EXECUTIVE DIRECTOR  
MR. ANVAR SADATH K., PIN - 695012

BY ADVS.  
V.A.HARITHA  
MIDHUNA BHASKAR

RESPONDENTS:

- 1 UNION OF INDIA, THROUGH THE SECRETARY, MINISTRY OF  
FINANCE, DEPARTMENT OF REVENUE, NORTH BLOCK, NEW  
DELHI, PIN - 110001
- 2 THE COMMISSIONER OF CGST & CENTRAL EXCISE,  
HAVING ITS OFFICE AT: P.B. NO.13, GST BHAVAN,  
PRESS CLUB ROAD, THIRUVANANTHAPURAM, PIN - 695001
- 3 ADDITIONAL / JOINT COMMISSIONER OF CGST & CENTRAL  
EXCISE,  
HAVING ITS OFFICE AT: GST BHAVAN, PRESS CLUB  
ROAD, THIRUVANANTHAPURAM, PIN - 695001

BY ADV P.G.JAYASHANKAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR  
ADMISSION ON 22.11.2024, THE COURT ON THE SAME DAY  
DELIVERED THE FOLLOWING:



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## **JUDGMENT**

The petitioner is a Company registered under Section 8 of the Companies Act, 2013 and is an entity registered under Section 12AA of the Income Tax Act, 1961. 99.99% of its shares are held by the Government of Kerala. According to the petitioner, the Government of Kerala started IT based education initiatives in the year 2001 through the '*IT@School*' project to streamline and enhance digital education. According to the petitioner, in order to ensure the availability of adequate infrastructure in Government and aided schools, the petitioner was constituted as a special purpose vehicle on 20.07.2017 in accordance with Government directives. It is stated that the petitioner procures hardware required for the purposes of IT education in Government schools by floating competitive tenders and thereafter supplies the hardware to various schools on the basis of requirements and directives issued by the General Education Department. It is submitted that the entire funding of the petitioner is by the Government through the Kerala Infrastructure Investment Fund Board (KIIFB), which is again a statutory body under the Government of Kerala.



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2. The petitioner is before this Court challenging Ext.P1 order of adjudication issued by the 3<sup>rd</sup> respondent under the provisions of the CGST/SGST Acts holding that the petitioner is liable to pay Goods and Services Tax amounting to Rs.99,05,74,260/- for the period from July 2017 to March 2021 and interest thereon and imposing a penalty of Rs. 4,95,28,713/- on the petitioner principally on the premise that the petitioner is effecting a composite supply of goods and services to the schools and is therefore liable to pay Goods and Services Tax.

3. Sri. P.V. Dinesh, the learned Senior Counsel appearing for the petitioner, on the instructions of Adv.V.A.Haritha, submits that the entire premise upon which Ext.P1 order was issued is flawed. It is submitted that the findings in Ext.P1 indicate a total non-application of mind by the 3<sup>rd</sup> respondent to the relevant aspects and also a completely skewed approach to the analysis of the issue by the 3<sup>rd</sup> respondent. It is submitted that there is nothing in Ext.P1 to indicate that the transactions between the petitioner and the Government and certain aided schools amount to a 'supply' as defined in Section 7 of the CGST / SGST Acts. It is submitted that there is no suggestion in the show cause notice or in the order that



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would suggest that the activity of the petitioner would amount to an activity specified in Schedule I of the CGST Act. In other words, it is submitted that there is no finding in Ext.P1 that any supply has been made by the petitioner on receipt of consideration and therefore, there cannot be any doubt that the activity of the petitioner does not amount to supply for the purpose of Section 7 of the CGST / SGST Acts. It is also the case of the learned Senior Counsel for the petitioner that if at all the activity of the petitioner were to be treated as a supply under Section 7 of the CGST / SGST Acts, the petitioner is entitled to the benefit of Ext.P10 notification issued under Section 11 of the CGST Act, 2017. It is submitted that while the adjudicating authority accepts that a supply of goods procured out of Government grants would be exempt from the levy of GST by virtue of Ext.P10 notification, the adjudicating authority proceeds to hold that there is a transfer of property in goods by the petitioner to the General Education Department and further that the amounts received by the petitioner from the KIIFB do not constitute a grant by the Government. It is submitted that the petitioner had procured the goods after paying GST and even assuming that the subsequent transfer to the Government Schools etc. amounted to supply for the



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purposes of Section 7 of the CGST/SGST Acts such a supply would be a revenue-neutral exercise as the petitioner would be entitled to take the benefit of input tax credit and that would completely cover the tax liability of the petitioner on the supply as there is no finding that the petitioner had charged any further amount for supplying the goods to the Schools etc. It is submitted that several of the findings of the adjudicating authority in Ext.P1 are contradictory and mutually irreconcilable.

4. The learned Standing Counsel appearing for the respondent Department vehemently opposes the grant of any relief to the petitioner. It is submitted that when the petitioner had earlier approached this Court by filing a writ petition challenging the show cause notice, this Court had taken the view that the contentions taken by the petitioner are to be taken before the adjudicating authority. It is submitted that on an application of the same principle, the petitioner ought to avail alternate remedies against Ext. P1 and no ground has been made out for interference with Ext.P1 in the exercise of writ jurisdiction vested in this Court under Art.226 of the Constitution of India. The learned Standing Counsel has extensively referred to the findings in Ext.P1 to establish that each and every



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contention taken by the petitioner has been properly considered by the adjudicating authority before reaching any conclusion. It is submitted that the petitioner has no case that the remedy of appeal to the appellate authority is not an effective remedy or that any contention taken by the petitioner in the present writ petition cannot be considered by the appellate authority. It is submitted that in such circumstances, this Court should not interfere with Ext.P1 order and should relegate the petitioner to avail the alternate remedy under Section 107 of the CGST/SGST Acts.

5. Having considered the submissions made across the bar and having perused Ext.P1 order of the adjudicating authority, I am of the view that the petitioner is entitled to relief. A reading of Ext.P1 order does not lead me to conclude that there is a coherent and principled approach to the contentions taken by the petitioner before the adjudicating authority. The learned Senior Counsel for the petitioner is right in contending that there are contradictory findings in Ext.P1. Paragraph 48 of Ext.P1 reads thus:-

*48. Thus based on the discussion above, the property in goods is seen to have been transferred to KITE, and KITE also holds the title to goods. Therefore when viewed through the prism of Sale of Goods Act, 1930, Indian*



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*Contract Act, 1872 as well as CGST Act, 2017, the status of KITE as receiver of supply of goods in the transaction with vendors/ CONTRACTORS, is indisputably and undeniably established.*

Paragraph 55 of Ext.P1 reads thus:-

*55. Thus from the discussion in foregoing paras leads to just one unmistakable and clear conclusion that the owner of the project and therefore the owner of the goods is GED. Therefore I discard the claim of ownership made by the TP in respect of the goods supplied as a part of the project implementation. I also discard the document adduced by the TP as Exhibit 8 of the reply dated 13-11-2023, which is minutes of a meeting of Board of Directors of KITE held on 28-09-2022.”*

While the adjudicating authority accepts that the petitioner is the owner of the goods in paragraph 44, he proceeds to hold in paragraph 55 that the ownership of the goods vests in the General Education Department. These findings are clearly contradictory. I make no attempt to set out in detail the other contradictions in Ext.P1 as this is not necessary for the purposes of this case. The above is only one example of the contradictions in Ext.P1 order.

6. There is yet another aspect of the matter. Section 7 of the





CGST Act (to the extent it is relevant) reads thus:-

**“7.- Scope of supply.-**(1) For the purposes of this Act, the expression- "supply" includes-

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or **agreed to be made for a consideration by a person in the course or furtherance of business;**

(aa) .....

(b) .....

(c) **the activities specified in Schedule I, made or agreed to be made without a consideration;**  
(Emphasis is supplied)

A reading of Section 7 makes it clear that in respect of transactions which do not fall under Schedule I, consideration is an essential ingredient to establish that there is either a supply of goods or services. There is nothing in Ext.P1 which would indicate that the petitioner had received any consideration from the Government, the KIIFB or the General Education Department as consideration for the supply of goods or services. The petitioner has only received grants to meet its day-to-day expenses including salary, allowances etc. Such payment cannot be deemed to be a consideration for the alleged services rendered or for goods supplied by the petitioner. The revenue has no case that the activity of the petitioner falls within





## Scheduled-I.

7. Notification No.2/2017-Central Tax (Rate) dated 28.6.2017 was issued in the exercise of the powers conferred by sub-section (1) of section 11 of the Central Goods and Services Tax Act, 2017 exempting certain intra-State supplies of goods, the description of which is specified in column (3) of the Schedule appended to the notification, from the whole of the central tax leviable thereon under section 9 of the Central Good and Services Tax Act, 2017 (12 of 2017). This Notification was amended from time to time. By Notification No.35/2017-Central Tax (Rate) dated 13.11.2023 Notification No.2/2017-Central Tax (Rate) New Delhi, dated 28.6.2017 was amended by including (amongst other things) Sl.No.150 which reads thus:-

"150	-	<i>Supply of goods by a Government entity to Central Government, State Government, Union territory, local authority or any person specified by Central Government, State Government, Union territory or local authority, against consideration received from Central Government, State Government, Union territory or local authority in the form of grants";</i>
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*(B) in the Explanation, after clause (iv), the following clause shall be inserted, namely:-*

*“(v) The phrase “Government Entity” shall mean an authority or a board or any other body including a society, trust, corporation, which is:*

*(a) set up by an Act of Parliament or State Legislature; or*

*(b) established by any Government, with 90 percent or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State government, Union territory or a local authority.”.*

The adjudicating authority has not properly considered the effect of Ext.P10 notification. It is the specific case of the petitioner that the petitioner was a special purpose vehicle for the purposes of implementing a specific project of the Government of Kerala and it had procured the goods on the basis of the terms of the tripartite agreement entered into between the petitioner, the KIIFB and the General Education Department. The adjudicating authority has taken the view that since the goods were purchased by utilising the



funds of KIIFB, the same cannot be treated as a grant for the purposes of Ext.P10 notification. This, in my view, is a rather myopic view of the notification, in the facts and circumstances of this case.

8. A Division Bench of this Court in ***Prodair Air Products India Private Limited v. State of Kerala***; 2023 (3) KLT 234 held as follows:-

*“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*



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*Law' - <https://www.administrativelawmatters.com/blog/2020/04/20/vavilov-and-the-culture-of-justification-in-administrative-law/>.”*

Tested on the principles laid down in the judgment of this Court in ***Prodair Air Products India Private Limited*** (supra), Ext.P1 cannot pass muster.

9. Therefore, I have no hesitation to quash Ext.P1 and direct that the adjudication of Ext.P22 show cause notice be restored to the file of the 3<sup>rd</sup> respondent who shall pass fresh orders after affording an opportunity of hearing to the petitioner and specifically considering the question as to whether in the absence of consideration, there could be any supply of goods or services as defined in Section 7 of the CGST Act and also specifically considering the question as to why the amounts obtained through the KIIFB for the implementation of the project which was entrusted to the petitioner should not be treated as grant from the Government (considering the fact that the KIIFB is a statutory body completely within the control of the Government of Kerala) for the purposes of Ext.P.10 Notification read with the terms of Notification No.2/2017-Central Tax (Rate) New Delhi, dated 28.6.2017.



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Accordingly, Ext.P1 is quashed and the adjudication of Ext.P22 is restored to the file of the 3<sup>rd</sup> respondent who shall pass fresh orders as directed above and taking into consideration the above points and any other points that may be raised by the petitioner before the 3<sup>rd</sup> respondent. The 3<sup>rd</sup> respondent shall pass fresh orders as directed above within a period of three months from the date of receipt of a certified copy of this judgment. The period from the date of issuance of Ext.P1 order till the date on which a fresh order is issued as directed above will stand excluded for the purpose of determining the limitation within which such fresh orders have to be passed by the 3<sup>rd</sup> respondent. It is clarified that any observation in this judgment is only for the purpose of considering the contentions raised and shall not be seen as a final finding by this Court on any issue. Writ petition will stand ordered accordingly.

**GOPINATH P.  
JUDGE**

acd



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APPENDIX OF WP(C) 12864/2024

PETITIONER EXHIBITS

- Exhibit P1 A TRUE COPY OF THE ORDER-IN-ORIGINAL  
NO.28/2023-24 GST (ADC) DATED 6TH  
FEBRUARY 2024 PASSED BY RESPONDENT NO.3
- Exhibit P2 A TRUE COPY OF PRINTOUT OF THE DETAILS  
OF KITE TAKEN FROM THE PETITIONER'S  
WEBSITE
- Exhibit P3 A TRUE COPY OF THE KIIFB ACT, 1999
- Exhibit P4 A TRUE COPY OF MEMORANDUM OF ASSOCIATION  
OF KITE
- Exhibit P5 A TRUE COPY OF THE G.O. (RT)  
NO.1456/2017/G.EDN. DATED 20.05.2017
- Exhibit P6 A TRUE COPY OF THE NOTIFICATION  
NO.12/2017 - CENTRAL TAX (RATES) DATED  
28TH JUNE, 2017
- Exhibit P7 A TRUE COPY OF THE ORDER FOR  
REGISTRATION U/S. 12AA OF INCOME TAX  
ACT, 1961
- Exhibit P8 A TRUE COPY OF THE TRIPARTITE AGREEMENT  
BETWEEN THE PETITIONER, GENERAL  
EDUCATION DEPARTMENT AND M/S KERALA  
INFRASTRUCTURE INVESTMENT FUND BOARD  
DATED 17TH JULY 2017
- Exhibit P9 A TRUE COPY OF THE GO (MS) NO.  
69/2018/FIN DATED 24TH FEBRUARY 2018  
ISSUED BY THE GOVERNMENT OF KERALA
- Exhibit P10 A TRUE COPY OF THE NOTIFICATION  
NO.35/2017 CENTRAL TAX (RATE) DATED 13TH  
OCTOBER 2017 ISSUED BY THE MINISTRY OF  
FINANCE



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- Exhibit P11** A TRUE COPY OF GO(P) NO.167/2021/FIN  
DATED 08.12.2021
- Exhibit P12** A TRUE COPY OF G.O. (RT)  
NO.714/2017/G.EDN. DATED 14.03.2017  
ISSUED BY THE GED PROVIDING  
ADMINISTRATIVE SANCTION FOR SUBMITTING  
DPR IN RESPECT OF HI-TECH SCHOOL PROJECT  
BEFORE KIIFB
- Exhibit P13** A TRUE COPY OF G.O. (RT)  
NO.1827/2017/G.EDN. DATED 09.06.2017  
ISSUED BY THE GED PROVIDING REVISED  
ADMINISTRATIVE SANCTION FOR SUBMITTING  
DPR BEFORE KIIFB
- Exhibit P14** A TRUE COPY OF THE PETITIONER'S PROJECT  
REPORT FOR THE HI-TECH UPGRADATION OF  
SCHOOLS
- Exhibit P15** A TRUE COPY OF THE MINUTES OF MEETING OF  
THE BOARD DIRECTORS OF THE PETITIONER  
DATED 28/09/2022
- Exhibit P16** A TRUE COPY OF THE INSURANCE AGREEMENT  
OF THE PETITIONER DATED 20.11.2020
- Exhibit P17** A TRUE COPY OF THE LETTER BEARING  
NO.D3/283/2023- G EDN DATED 11.01.2024  
FROM THE PRINCIPAL SECRETARY TO  
GOVERNMENT SENT TO THE PETITIONER
- Exhibit P18** A TRUE COPY OF THE LEDGER ACCOUNT OF THE  
PETITIONER FOR 'HI-TECH SCHOOL PROGRAMME  
(ASSET)' FOR THE PERIOD 1/4/17 TO  
31/3/2021
- Exhibit P19** A TRUE COPY OF THE EXTRACT FROM THE  
ASSET REGISTER DATED NIL MAINTAINED BY  
PETITIONER
- Exhibit P20** A TRUE COPY OF THE G.O. (P)





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NO.170/2019/FIN DATED 13/12/2019 ISSUED  
BY THE FINANCE (INFRASTRUCTURE)  
DEPARTMENT, GOVERNMENT OF KERALA

- Exhibit P21 A TRUE COPY OF THE INCOME SUMMARY OF THE  
PETITIONER FOR THE PERIOD 2017-21
- Exhibit P22 A TRUE COPY OF THE SHOW CAUSE NOTICE  
DATED 18TH SEPTEMBER 2023 ISSUED BY THE  
3RD RESPONDENT TO THE PETITIONER
- Exhibit P23 A TRUE COPY OF THE WRITTEN REPLY DATED  
13TH NOVEMBER 2023 SUBMITTED BY THE  
PETITIONER HEREIN BEFORE THE 3RD  
RESPONDENT
- Exhibit P24 A TRUE COPY OF THE ORDER DATED  
17.01.2024 PASSED BY THE HON'BLE HIGH  
COURT OF KERALA IN W.P. NO.41710 OF 2023
- Exhibit P25 A TRUE COPY OF THE PERSONAL HEARING  
NOTICE DATED 22.01.2024 ISSUED BY  
RESPONDENT NO.3
- Exhibit P26 A TRUE COPY OF ADDITIONAL REPLY DATED  
30.01.2024 FILED BY THE PETITIONER
- Exhibit P27 A TRUE COPY OF THE CHART DEPICTING THE  
TOTAL GST PAID TO THE SUPPLIER ON  
PROCUREMENT OF GOODS FOR THE PERIOD FROM  
SEPTEMBER 2017 TO MARCH 2021
- Exhibit P28 A TRUE COPY OF THE AUDITED FINANCIAL  
STATEMENTS OF THE PETITIONER (F.Y.2017-  
18, 2018-19, 2019-20 AND 2020-21
- Exhibit P29 A TRUE COPY OF THE INCOME TAX RETURN  
ACKNOWLEDGMENTS (FOR A.Y.2018-19, 2019-  
20, 2020-21 AND 2021-22) FILED BY THE  
PETITIONER
- Exhibit P30 A TRUE COPY OF THE JUDGEMENT IN IN RE:  
KOCHI METRO RAIL LTD. [(2020) 40 GSTL



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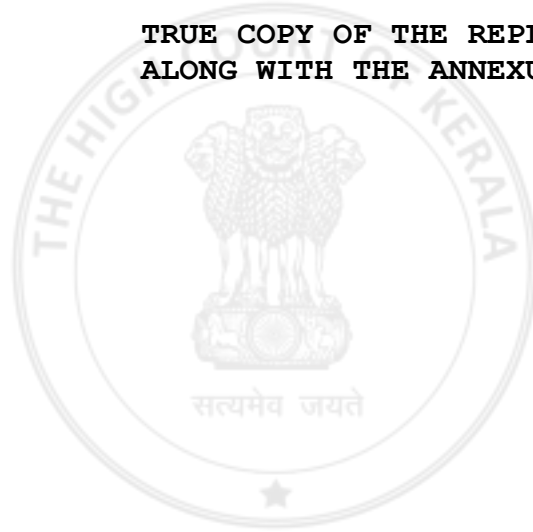
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Exhibit P31

A TRUE COPY OF THE JUDGEMENT PRONOUNCED  
ON 18-02-2022 IN RAJCOMP INFO SERVICE  
LTD. VERSUS COMMISSIONER OF C. EX.  
COMMISSIONERATE, JAIPUR 2022 (65)  
G.S.T.L. 103 (TRI.-DEL)'

Exhibit P32

TRUE COPY OF THE REPLY DATED 13.11.2023  
ALONG WITH THE ANNEXURES



HIGH COURT OF KERALA  
CERTIFIED COPY