



2026:KER:77310

WP(C) No. 42585 of 2024

:1:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

&

THE HONOURABLE MR. JUSTICE K. V. JAYAKUMAR

THURSDAY, THE 8TH DAY OF OCTOBER 2026 / 16TH ASWINA, 1948

WP(C) NO. 42585 OF 2024

PETITIONER:

V.P. SUGATHAN
AGED 70 YEARS
S/O. PADMANABHAN, VATTACHALPUTHUPARAMBIL,
ERUMELI KOTTAYAM, PIN - 686509

BY ADVS.
SRI.R.KRISHNA RAJ
SRI.R.PRATHEESH (ARANMULA)
SMT.E.S.SONI
SMT.SREERAJA V.
SMT.LAXMI PRIYAA N.P.

RESPONDENTS:

- 1 TRAVANCORE DEVASWOM BOARD
REPRESENTED BY ITS SECRETARY,
DEVASWOM HEAD QUARTERS, NANDANCODE,
THIRUVANANTHAPURAM, PIN - 695003
- 2 DEVASWOM COMMISSIONER
DEVASWOM HEAD QUARTERS, NANDANCODE,
THIRUVANANTHAPURAM, PIN - 695003



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3 DEPUTY DEVASWOM COMMISSIONER
TRAVANCORE DEVASWOM BOARD,
OFFICE OF THE DEPUTY DEVASWOM COMMISSIONER,
PATHANAMTHITTA, PIN - 689645

4 THE ADMINISTRATIVE OFFICER
TRAVANCORE DEVASWOM BOARD,
ERUMELY DHARMA SASTHA TEMPLE,
ERUMELI DEVASWOM, ERUMELY,
KOTTAYAM, PIN - 686509

ADDL.R5 STATE OF KERALA
KERALA GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM 695 001,
REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT

ADDL.R6 THE SPECIAL SECRETARY TO GOVERNMENT
REVENUE (DEVASWOM) DEPARTMENT,
KERALA GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695001

ADDL.R7 THE SECRETARY TO GOVERNMENT
TAXES DEPARTMENT,
KERALA GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695001

ADDL.R8 THE COMMISSIONER
COMMISSIONERATE, GST DEPARTMENT,
THIRUVANANTHAPURAM 695 002
[ADDL.R5 TO ADDL.R8 ARE IMPEADED AS PER ORDER
DATED 09.12.2024 IN I.A.NO.1/2024 IN
WP(C) 42585/2024] .

ADDL.R9 THE COMMISSIONER
CENTRAL GST, CENTRAL EXCISE AND CUSTOMS,
KOCHI COMMISSIONERATE, THIRUVANANTHAPURAM ZONE,
C.R.BUILDINGS, I.S. PRESS ROAD,
KACHERIPADI, PIN 680 018
[IS SUO MOTU IMPEADED AS PER ORDER DATED
10.01.2025 IN WP(C) 42585/2024] .



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BY ADVS.

SHRI.G.BIJU,SC,TRAVANCORE DEVASWOM BOARD

SHRI.MOHAMMED RAFIQ, SPL.G.P. (TAX)

SHRI.V.GIRISHKUMAR, SC, CENTRAL BOARD OF
INDIRECT TAXES AND CUSTOMS

SHRI.VIVEK A.V.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR FINAL HEARING
ON 08.10.2026, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



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J U D G M E N T**Raja Vijayaraghavan V, J.**

The petitioner states that he is the successful bidder in the auction conducted by the Travancore Devaswom Board for the collection of fees from artists who perform Chendamelam during the Pettathullal at Erumeli for the Mandalam-Makaravilakku season of 1200 ME. He has produced before this Court Ext. P1 tender notification and submits that the item in respect of which he was the successful bidder is included as B-1 in the said notification. It is stated that, as per the terms of the notification, the successful bidder was entitled to collect a fee of ₹50/- from each artist for each performance.

2. The petitioner asserts that, by Ext. P3 notice dated 07.11.2024 issued by the Devaswom, he was informed that he had been granted the right to collect fees from the artists performing Chendamelam and that he had been awarded the tender for a sum of ₹46,68,117/-. Pursuant to the said communication issued by the Travancore Devaswom Board, the petitioner states that he paid a sum of ₹46,98,117/- towards the quoted amount for the tender. He further states that he paid a sum of ₹8,40,261/- towards GST at the rate of 18% on the aforesaid amount, which was payable to the Government. Exts. P4 and P5 are the challans produced by the petitioner evidencing the payment of

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₹46,98,117/- towards the tender amount and ₹8,40,261/- towards GST, respectively.

3. The petitioner states that, in exercise of the right granted to him under the tender, he collected ₹50/- as the prescribed fee and an additional amount of ₹9/- towards GST at the rate of 18%, thereby collecting a total amount of ₹59/- from each artist for each performance. According to the petitioner, such collection was permissible under the terms of the tender and the applicable tax provisions. However, the petitioner states that, on 18.11.2024, a notice was affixed to the wall at the premises informing the artists that they were required to pay only ₹50/- as the fee and that the said amount was inclusive of GST.

4. According to the petitioner, he is entitled to pass on the GST liability borne by him to the ultimate recipient of the service, namely, the customer. It is the specific contention of the petitioner that the artists who perform the Chendamalam are the ultimate recipients or users of the service for the purposes of the applicable tax law and, therefore, restricting the petitioner from collecting the GST component from them is illegal and unsustainable. The petitioner points out that he has already paid a sum of ₹8,40,261/- towards GST to the Devaswom Board at the time of acceptance of the tender, while the Devaswom Board is now not permitting him to recover or pass on the corresponding tax component to the artists from whom the fee is collected. According to the petitioner, this would

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effectively cast the entire tax burden upon him, despite the fact that the tax is liable to be borne by the ultimate recipient of the service.

5. It is on these assertions that the petitioner has approached this Court by filing the present writ petition, seeking the following reliefs:

- (a) Issue a writ of mandamus or such other writ or order or direction permit the petitioner to collect fees as per Ext.P1, P2 and P3 for chendamelam at the rate of Rs.50/- plus 18% GST from the melam artists.
- (b) To direct the Devaswom Board to refund the amount of tax which was not permitted to be collected by the Devaswom Board from 17.11.2024 by the issue of a writ of mandamus or such other writ or order or direction."

6. The counter-affidavit has been filed by the 1st respondent. It is stated that the Travancore Devaswom Board has published Ext. P1 notification inviting tenders for various items including the Kuthaka item B1 for the right to collect fee for 'Chendamelam'. As per Ext. P1 notification, the security deposit for the amount is ₹30,000/-. It is also stated in Ext. P1 that the collection of fees from melakkar is Kuthaka item B1, which was awarded to the petitioner, as per which he is entitled to collect ₹50/- for one performance from the 'Melakkars'. The amount that can be collected by the Kuthaka holder from one group of pilgrims is ₹250/-. Out of which, the Kuthaka holder is entitled to take ₹50/- and the balance amount of ₹200/- is to be paid to the Mela artists.

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7. It is stated that the petitioner by quoting ₹46,68,117/- has become the highest bidder and he has secured the contract for the above amount plus the GST component. He took over and conducted the Kuthaka from 15.11.2024. It is stated that the petitioner is not entitled to collect ₹59/- from devotees by adding Rs.9/- under the guise of 18% GST to the scheduled rate of ₹50/-. When the Devaswom received the complaints, the Administrative Officer intervened and the petitioner was informed that he is entitled to obtain only ₹50/- per person and the same is inclusive of all taxes and he is not entitled to charge any amount over and above the rate fixed by the Court from the pilgrims.

8. It is further stated that the Sabarimala, Pamba, Nilakkal and Erumeli auctions are conducted through e-tenders and the fees chargeable from the pilgrims for various items like parking, use of toilets, clock room, chenda melam etc. have been included in the Kuthaka schedule. Apart from the fees specified in the schedule, no Kuthaka holder can collect any higher amount from the pilgrims. It is also stated that the charges specified in the schedule stipulated for collection from pilgrims is inclusive of all taxes.

9. It is further stated that the Kuthaka holders are liable to pay statutory charges/GST as per clause 23 of General Conditions of Ext. P1 tender notification and the entire GST amount has to be paid at the time of entering into the contract itself. It is further stated that for paying the statutory taxes, the

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Kuthaka holder is not entitled to collect any higher amount above the rate fixed by the Board/District Collector for the particular item.

10. In the course of proceedings, the 5th respondent was impleaded. A counter-affidavit has been filed by the 9th respondent. It is stated that the supplier of service is liable to pay tax on the taxable services supplied, irrespective of the fact whether the tax is collected from the recipient or not. The liability of the supplier to pay tax to the Government is imposed as per the statute. However, the right to collect tax from the recipient is governed by the terms and conditions of the contract that the supplier of services enters with the recipient. The supplier of services and the recipient are free to enter into contracts providing for payment of consideration of the taxable services either inclusive or exclusive of tax. The liability to pay tax is statutory whereas the passing over the burden of tax to the recipient is contractual.

11. It is further stated that the contracting parties are free to decide whether to enter into a contract including or excluding GST liability. However, in case the contracts that are entered into for consideration inclusive of GST, then GST has to be paid by considering the total amount of contract as inclusive of GST and working out the taxable value and tax as per Rule 35 of the GST Rules. The passing over of liability of tax by the petitioner as supplier to the recipients is not a matter coming within the ambit of the respondents herein.



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12. We have carefully considered the submissions advanced. Clause (23) of Ext.P1 reads as under:

23. കേന്ദ്ര സംസ്ഥാന ഗവണ്മെന്റുകളിലേക്ക് ഏതെങ്കിലും തരത്തിലുള്ള നികുതികൾ കൊടുക്കേണ്ടി വരുന്ന പക്ഷം (ജി.സ്.ടി) കുത്തകക്കാരൻ ടി നികുതി നേരിട്ട് കൊടുക്കുന്നതിനു ബാധ്യസ്ഥനാണ്. കുത്തക ഏറ്റെടുക്കുമ്പോൾ തന്നെ ആകെ കുത്തകയുടെ 18% ജി.സ്.ടി കൂടി ഒടുക്കേണ്ടതാണ്. ജി.സ്.ടി സംബന്ധിച്ചുള്ള സംശയ നിവാരണങ്ങൾക്കും ദേവസ്വം ചാർജ്ജർഡ് അക്കൗണ്ടന്റ് വിജയൻ അസ്സോസിയേറ്റുമായി ബന്ധപ്പെടാവുന്നതാണ്.

13. Insofar as the Chendamelam is concerned, Ext.B1 deals with the amount that can be realised from the Melakkar. It reads as under:

പേട്ടത്തുള്ളിൽ പങ്കെടുക്കുന്ന മേളക്കാരിൽ നിന്നും മേളം ഒന്നിന് 50/- രൂപ ക്രമം ഫീസ് പിരിക്കുന്നതിനുള്ള അവകാശം 1200 M.E. തുലാമാസം 25 മുതൽ മണ്ഡല - മകരവിളക്ക് കാലത്തേക്കും 1201 ME തുലാമാസം വരെയുള്ള മാസപൂജ കാലയളവിലും മാത്രം. മേളക്കാർ നടത്തുന്ന അകമ്പടി മേളത്തിന് ഒരു വാദ്യത്തിനു 250/- രൂപ മാത്രമേ സ്വാമി ഭക്തന്മാരിൽ നിന്നും ഈടാക്കുവാൻ പാടുള്ളൂ. സെക്യൂരിറ്റി 30,000/- രൂപ.

14. Thus, the Kuthaka right to collect charges for Chendamelam is awarded to the petitioner subject to the tender conditions. The kuthaka holders are liable to pay statutory charges/GST as per clause 23 of the General conditions of Ext.P1 tender notification. The entire GST amount has to be paid at the time of entering the contract itself. The stand of the Devaswom is that for paying the statutory taxes, the kuthaka holder is not entitled to collect any higher amount

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over and above the rate fixed by the Board/District Collector for the particular item. The Board has also taken the stand that apart from the fees specified in the schedule, no kuthaka holder can collect any higher amount from the pilgrims.

15. The contention of the petitioner is that having paid the GST component in respect of the tender amounts, he is entitled to recover the corresponding GST from the persons from whom he is authorized to collect the fees for the Chendamalam. According to the petitioner, the amount prescribed under the tender is Rs. 50/- and if that be the case, he is entitled to collect Rs. 50/- towards the prescribed fee and a further sum of Rs. 9/- towards GST.

16. We find that the said contention proceeds on the premise that the statutory liability to pay GST carries with it a corresponding right to recover the tax separately from the recipient of the service. We are afraid that the said contention cannot be accepted. The liability of a supplier to discharge the tax payable under the statute and the question as to whether the supplier is entitled to pass on the burden of such tax to the recipient are distinct and separate matters. As rightly pointed out by the 5th respondent in their counter, the liability to pay GST is a statutory liability. The supplier of a taxable service is liable to discharge the tax payable in accordance with the provisions of the tax and statute irrespective of whether the tax component is separately recovered from the recipient. However, the right of the supplier to recover the tax component from the recipient would

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depend upon the terms governing the transaction between them or in other words, the contractual terms.

17. In the case on hand, the petitioner secured his right to collect the fee only by virtue of the tender awarded to him by the 1st respondent. His entitlement to collect any amount from the pilgrims can only be as per the terms and conditions of the tender.

18. Having gone through Ext.P1, we find that as per kuthaka item B1, the petitioner was entitled to collect Rs. 50/- for one performance from the Melakkars and that the amount prescribed in the kuthaka schedule for collections from pilgrims is inclusive of all taxes. The petitioner having participated in the tender and obtained the right is bound by the terms and conditions of the tender. Furthermore, the petitioner has not been able to point out any provision in Exts.P1 to P3 which confers on him a right to collect over and above the prescribed fee of Rs.50/-, an additional amount towards GST. The contention of the petitioner that the artists are the ultimate recipients of the service and the GST can be passed on to them does not mean that such status would confer upon the petitioner an independent right to recover an additional amount contrary to the terms of the contract. In other words, the question boils down to the question as to whether the petitioner has a contractual right to recover an additional sum of Rs. 9/-.

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19. The petitioner has also sought for a direction to the 1st respondent to refund the tax, which according to him, he was prevented from collecting from 17.11.2024. The petitioner has not been able to point out any provisions of Ext.P1 to P3 or any provision of law under which the 1st respondent becomes liable to reimburse the petitioner. The petitioner's statutory obligation to discharge GST cannot in the absence of statutory or contractual basis be converted into a corresponding liability on the part of the 1st respondent to reimburse the petitioner.

20. In view of the discussion above, we hold that the petitioner has failed to establish any enforceable legal or contractual right to collect Rs. 50/- + 18% GST from the artists. He is also not entitled to claim any reimbursement from the Devaswom as prayed for.

This Writ Petition is dismissed. There will be no order as to costs.

sd/-

**RAJA VIJAYARAGHAVAN V,
JUDGE**

sd/-

**K.V. JAYAKUMAR,
JUDGE**



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APPENDIX OF WP(C) NO. 42585 OF 2024

PETITIONER EXHIBITS

Exhibit P-1	TRUE COPY OF THE NOTIFICATION ROC NO.01/11/2024/EMLY DATED NIL
Exhibit P-2	TRUE COPY OF THE CORRECTED NOTIFICATION ROC NO.176/2024/EMLY/LELAM DATED NIL
Exhibit P-3	TRUE COPY OF THE NOTICE GIVEN BY THE TRAVANCORE DEVASWOM BOARD DATED 07.11.2024
Exhibit P-4	TRUE COPY OF THE TDB CHALLAN FOR AN AMOUNT OF RS.46,98,117/- DATED 11.11.2024
Exhibit P-5	TRUE COPY OF THE TDB CHALLAN FOR AN AMOUNT OF RS.8,40,261/- DATED 13.11.2024
Exhibit P-6	TRUE COPY OF THE NOTICE STUCK ON THE WALL OF THE ERUMELY DHARMA SASTHA TEMPLE DATED NIL