

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 24TH DAY OF AUGUST 2020 / 2ND BHADRA, 1942

WP(C).No.14144 OF 2020(P)

PETITIONER/S:

RAJIVE AND COMPANY
(CHUNGATH JEWELLERY)
VALIYATH PLAZA, OPP.KSRTC BUS STAND
KARUNAGAPALLY, KOLLAM - 690518
REPRESENTED BY ITS MANAGING PARTNER, RAJIVE PAUL C

BY ADVS.
SRI.HARISANKAR V. MENON
SMT.MEERA V.MENON
SMT.K.KRISHNA

RESPONDENT/S:

- 1 THE ASSISTANT COMMISSIONER
SPECIAL CIRCLE, STATE GST DEPARTMENT
KOLLAM - 691 002
- 2 STATE TAX OFFICER, SQUAD NO.V
DEPARTMENT OF STATE GST
ERNAKULAM, KOCHI - 682015
- 3 THE STATE TAX OFFICER
SQUAD NO.II, DEPARTMENT OF STATE GST
KOLLAM AT KARUNAGAPALLY - 690518
- 4 STATE TAX OFFICER
MOBILE SQUAD NO.V
DEPARTMENT OF STATE GST
KOLLAM - 691002
- 5 STAT TAX OFFICER
SQUAD NO.IV, DEPT. OF SGST
THIRUVANANTHAPURAM - 695033
- 6 DY.COMMISSIONER
INTELLIGENCE, DEPARTMENT OF STATE GST
EDAPPALLY TOLL, ERNAKULAM
KOCHI - 682024

7 **THE COMMISSIONER OF COMMERCIAL TAXES
DEPARTMENT OF STATE GST
TAX TOWERS, KILLIPPALAM, KARAMANA
THIRUVANANTHAPURAM - 695002**

R1-6 BY GOVERNMENT PLEADER DR.THUSHARA JAMES

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
24.08.2020, ALONG WITH WP(C).14185/2020(W), WP(C).14907/2020(K),
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 24TH DAY OF AUGUST 2020 / 2ND BHADRA, 1942

WP(C).No.14185 OF 2020(W)

PETITIONER/S:

RAJIVE PAUL C., PROPRIETOR, M/S.CHUNGATH GOLD PLAZA
PONNAMMA CHAMBERS, II, OPP.ARCHANA ARADHANA THEATRE
KOLLAM-691001.

BY ADVS.
SRI.HARISANKAR V. MENON
SMT.MEERA V.MENON

RESPONDENT/S:

- 1 THE STATE TAX OFFICER
THIRD CIRCLE, DEPT. OF STATE GST, KOLLAM-691002.
- 2 STATE TAX OFFICER,
SQUAD NO.V, DEPARTMENT OF STATE GST, ERNAKULAM,
KOCHI-682015.
- 3 THE STATE TAX OFFICER,
SQUAD NO.II, DEPARTMENT OF STATE GST, KOLLAM AT
KOTTARAKKARA-691506.
- 4 STATE TAX OFFICER,
DEPARTMENT OF STATE GST, KOLLAM-691002.
- 5 DY.COMMISSIONER,
INTELLIGENCE, DEPARTMENT OF STATE GST, EDAPPALLY
TOLL, ERNAKULAM, KOCHI-682024.
- 6 THE COMMISSIONER OF COMMERCIAL TAXES,
DEPARTMENT OF STATE GST, TAX TOWERS, KILLIPPALAM,
KARAMANA, THIRUVANANTHAPURAM-695002.

R1-6 BY GOVERNMENT PLEADER DR.THUSHARA JAMES

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
24.08.2020, ALONG WITH WP(C).14144/2020(P), WP(C).14907/2020(K),
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 24TH DAY OF AUGUST 2020 / 2ND BHADRA, 1942

WP(C).No.14907 OF 2020(K)

PETITIONER/S:

RAJIV AND COMPANY
(CHUNGATH JEWELLERY), VALIYATH PLAZA, OPP. KSRTC
BUS STAND, KARUNAGAPPALLY, KOLLAM - 690 518,
REPRESENTED BY ITS MANAGING PARTNER, RAJIVE PAUL C.

BY ADVS.
SRI.HARISANKAR V. MENON
SMT.MEERA V.MENON
SMT.K.KRISHNA

RESPONDENT/S:

- 1 THE ASSISTANT COMMISSIONER
SPECIAL CIRCLE, STATE GST DEPARTMENT
KOLLAM - 691002.
- 2 STATE TAX OFFICER,
SQUAD NO.V, DEPARTMENT OF
STATE GST, ERNAKULAM, KOCHI- 682015.
- 3 THE STATE TAX OFFICER
SQUAD NO.II, DEPARTMENT OF STATE GST
KOLLAM AT KARUNAGAPPLLY - 690518.
- 4 STATE TAX OFFICER
MOBILE SQUAD NO.V, DEPARTMENT
OF STATE GST, KOLLAM - 691 002.
- 5 STATE TAX OFFICER
SQUAD NO.IV, DEPT. OF SGST
THIRUVANANTHAPURAM - 695 033.

- 6 THE JOINT COMMISSIONER
INTELLIGENCE, DEPARTMENT OF STATE GST, EDAPPALLY
TOLL, ERNAKULAM, KOCHI - 682024.
- 7 THE COMMISSIONER OF COMMERCIAL TAXES
DEPARTMENT OF STATE GST, TAX TOWERS, KILLIPPALAM,
KARAMANA, THIRUVANANTHAPURAM - 695 002.

BY GOVERNMENT PLEADER DR.THUSHARA JAMES

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
24.08.2020, ALONG WITH WP(C).14144/2020(P), WP(C).14185/2020(W),
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

As these writ petitions involve a common issue, they are taken up for consideration together and disposed by this common judgment.

2. The petitioners have approached this Court through the present writ petitions at various stages during an investigation that is ongoing into the affairs of the petitioners under the GST Act, at the instance of the respondents. In the writ petition, it is the case of the petitioners that their request for copies of documents, that were seized by the respondents in connection with the ongoing investigation, has been illegally turned down by the respondents, and further, while the petitioners have their business activities centred around Karunagappally, Thiruvananthapuram, Kollam and Ernakulam respectively, the investigation has been based in Ernakulam, which causes inconvenience to the petitioners in that they have to carry their records pertaining to the other branches all the way to Ernakulam for participating in the investigation proceedings. The prayer in the writ petition, therefore, is for direction to the respondents to issue copies of the seized documents, as also for a transfer of the investigation to Kollam so that the petitioners are not inconvenienced in the investigation process initiated by the respondents.

3. Through a statement filed on behalf of the respondents it is stated as follows in paragraphs 2 to 8.

"2. It is submitted that the various places of business of Chungath Group of concern, a registered person under the

GST Act and dealer in precious metals, jewellery etc. Bearing
GSTIN Nos. 32AAHFR7213D1ZM,
32ACKPR7163H1ZD,32AAJFC3617LIZI,32AAGFC0176R1Z9,
32AAJFC3618F1ZU, 32AABFF1346F1Z2, 32AAF06176N1ZU
and 32ABZFS9517J1ZD were inspected by the proper officers
authorized under section 67(1) of the CGST and KSGST Act
2017 on 18.12.2019. Under the above 8 registrations, 16
places of businesses are involved. On the basis of inspection
and in the interest of work, administration and revenue and
further to felicitate speedy disposal, the above crime files were
distributed by the Deputy Commissioner (Intelligence), the 5th
respondent herein. The files of M/s Chungath Gold Plaza at
Kollam (the petitioner) and Chungath Jewellery, Karunagapally.
Kollam (petitioner in wp 14144 of 2020) were allotted to the
2nd respondent vide order referred to above dated 01-01-2020.
It is humbly submitted that the same was issued by the 5th
respondent after discussions with the Deputy Commissioner,
intelligence. Thiruvananthapuram. Such internal work
arrangements, based on the
information/inspection/investigation by intelligence
officers/squad are integral to proper administration of work,
particularly in matters of revenue. In this regard, reference
may be made to section 6 of the KSGST Act, where it is
expedient to appoint officers as 'proper officers'. The allotment
of files and work arrangements to various tax officers, who
may designated as 'proper officers' for the purpose of carrying
out the provisions of the Act, are matters of policy and
administration within the Commercial Taxes Department.
Dealers cannot be consulted on such decisions, and the Deputy

Commissioner or Joint Commissioner, while arriving at such a decision may take into consideration, crucial information, relating to the Crime file.

3. Thus crime files of Chungath Group, bearing GSTIN 32AAHFR7213D1ZM and GSTIN 32ACKPR7163H1ZD were entrusted to the 2nd respondent herein. Among the two allotted crime files, the branch office of the petitioner, M/s Chungath Gold Plaza, KPCC Jn, MG Road Emakulam bearing GSTIN 32ACKPR7163H1ZD was inspected by the 2nd respondent.

4. It is submitted, that at the time of inspection, huge variation in the stock of gold jewellery were noted in the place of business at Chungath Gold Plaza, KPCC Jn, MG Road, Ernakulam, a branch office of the petitioner. Details of the same is recorded in the Mahazar pertaining to the said inspection prepared in Form GSTINS 02, under Rule 13912. On prima facie verification of the seized records, several unaccounted business transactions were noticed. Ffor the cross examination of evidence, further verifications and clarifications on the documents recovered from the aforesaid business places, in compliance with section 35 of the CGST/KSGST Act 2017, books of accounts were called for, from the petitioner, by the 2nd respondent. The petitioner, in response to the first notice, Exhibit P2, preferred replies by way of representations to 5th, 2nd and 3rd respondents, requesting for transfer of files from the 2nd respondent to the 4th respondent. The petitioner also prayed for taking photocopies of the seized records.

5. The respondent herein submits that as per available records major volume of business is found in the additional place of business, ie; at KPCC Jn, M.G.Road, Ernakulam. The petitioner repeatedly stated in representations as well as in writ petition, that the books of accounts of said premises are kept and maintained at their head office is not a legally justifiable ground for transfer of files to 4th respondent. The petitioner is statutorily obliged to maintain books of accounts and other details at the place of business. Section 35 of the CGST/KSGST Act 2017 reads: *"Provided that where more than one place of business is specified in the Certificate of registration, the accounts relating to each place of business shall be kept at such place of business"*.

6. Further, it is found that the lion share of business of the group is concentrated in districts of Ernakulam and Thrissur and their accounts are also being kept at there. A total of 16 places of business falling under 8 registrations were inspected on 18.12.2019 and of these 16 places, 11 business places are located in Ernakulam and Thrissur Districts coming under the jurisdiction of Ernakulam zone of the SGST Department. The respondent submits that the request of the petitioner to transfer files is not bonafide and is only a tactic to delay the process.

7. Moreover, the reason cited for transfer of files from Ernakulam to Kollam/Karunagapally is that it is difficult for the accounting staff to travel to Ernakulam carrying registers concerned. Given the fact that the area of business operations of the Chungath Group concerns is distributed all over Kerala,

and most concerns are in Ernakulam and Thrissur districts, such a reason mentioned for transfer can only be found to be unreasonable and unsustainable. On the basis of inspection it is also noticed that the petitioner is keeping most of the accounts in digital format which can be easily transferred electronically. In any case, it is submitted that there is no objection from the office of the respondent, in giving reasonable time for the petitioner to respond to the notice and produce documents, accounts etc, if the problem they face is due to Covid-19 restrictions on travel.

8. The respondent wishes to submit that gold is an evasion prone commodity, the crime files of which warrants speedy disposal in the sake of revenue. Unwarranted delay in proceedings can lead to irreparable damages and losses to the revenue of State, and may also lead to evasion tactics by the dealers. The petitioner has also asked for the copies of recoveries. It is submitted that taking such extracts/copies will adversely affect the investigation. As provided under Section 67(5) of the CGST/KSGST Act, 2017, the documents/books seized from the person need not be provided to the dealer, if in the opinion of the proper officer, it will prejudicially affect the investigation.”

4. The reasons indicated in the statement, for rejecting the request for transfer of the investigation to Kollam are also seen reflected in an order dated 20.05.2020 that is produced as Ext.R(a) by the respondents, and impugned by the writ petitioner in W.P.(C)No.14907/2020. It is further submitted by the learned Government Pleader that copies of the seized documents can be made available to the petitioners in the event notices are issued to the petitioners in the course of

investigation or thereafter, and reliance is placed therein on any specific documents seized from the petitioners.

5. I have heard Sri.Harisankar V.Menon, the learned counsel for the petitioner and Dr.Thushara James, the learned Government Pleader for the respondents.

6. On a consideration of the facts and circumstances of the case and the submissions made across the Bar, I find that the petitioners will no doubt be entitled to seek copies of the documents seized from their premises, if and when they are confronted by the respondents with any notice or other proceeding, wherein reliance is placed on the said seized documents. I, therefore, make it clear that in the event of any notice or other proceedings being issued to the petitioners in connection with the investigation that is currently ongoing, wherein reference is made to any document seized from the petitioners, the respondents shall permit the petitioners to take copies of those documents relied upon in the said notice/proceedings, before proceeding further in the matter. After the stage of investigation, the respondents shall return to the petitioners, all such seized documents as are not relied upon by them for proceeding further against the petitioners.

7. As regards the prayer of the petitioners for a transfer of the files to Kollam and to base the investigation in Kollam, I am of the view that the said prayer of the petitioners cannot be acceded to. In matters of investigation the respondents are to be given a certain degree of leeway while deciding such administrative matters such as the place at which an investigation is to be based and the manner in which it is to proceed. With such administrative decisions of the investigating authority this Court would be loath to interfere, in proceedings under

Article 226 of the Constitution of India.

I, therefore, dispose the writ petition by rejecting the prayer of the petitioners for a transfer of the investigation to Kollam, and by directing the respondents to furnish copies of the documents seized from the petitioners, in the manner indicated above.

Sd/-

A.K.JAYASANKARAN NAMBIAR

JUDGE

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APPENDIX OF WP (C) 14185/2020

PETITIONER'S/S EXHIBITS:

EXHIBIT P1	COPY OF MAHAZAR ISSUED BY THE 2ND RESPONDENT DATED 18.12.2019.
EXHIBIT P1 (A)	COPY OF MAHAZAR ISSUED BY THE 3RD RESPONDENT DATED 18.12.2019.
EXHIBIT P1 (B)	COPY OF MAHAZAR ISSUED BY THE STATE TAX OFFICER ERNAKULAM DATED 18.12.2019.
EXHIBIT P2	COPY OF NOTICE ISSUED BY THE 2ND RESPONDENT DATED 26.02.2020.
EXHIBIT P3	COPY OF LETTER SUBMITTED BY THE PETITIONER BEFORE THE 5TH RESPONDENT DATED 01.03.2020.
EXHIBIT P3 (A)	COPY OF LETTER SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 04.03.2020.
EXHIBIT P4	COPY OF APPLICATION FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 06.03.2020.
EXHIBIT P4 (A)	COPY OF APPLICATION FILED BY THE PETITIONER BEFORE THE 3RD RESPONDENT DATED 06.03.2020.
EXHIBIT P5	COPY OF NOTICE ISSUED BY THE 2ND RESPONDENT DATED 12.06.2020.
EXHIBIT P6	COPY OF LETTER SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 15.06.2020.
EXHIBIT P7	COPY OF LETTER SUBMITTED BY THE PETITIONER BEFORE THE 6TH RESPONDENT DATED 15.06.2020.
EXHIBIT P8	COPY OF NOTICE ISSUED BY THE 2ND RESPONDENT DATED 06.07.2020.

APPENDIX OF WP (C) 14907/2020

PETITIONER'S/S EXHIBITS:

EXHIBIT P1	COPY OF MAHAZAR ISSUED BY THE 3RD RESPONDENT .
EXHIBIT P1 (A)	COPY OF MAHAZAR ISSUED BY THE 4TH RESPONDENT .
EXHIBIT P1 (B)	COPY OF MAHAZAR ISSUED BY THE 5TH RESPONDENT .
EXHIBIT P2	COPY OF NOTICE ISSUED BY THE 2ND RESPONDENT .
EXHIBIT P3	COPY OF LETTER SUBMITTED BY THE PETITIONER BEFORE THE 6TH RESPONDENT .
EXHIBIT P4	COPY OF ORDER ISSUED BY THE 6TH RESPONDENT

APPENDIX OF WP (C) 14144/2020

PETITIONER'S/S EXHIBITS:

EXHIBIT P1	COPY OF MAHAZAR ISSUED BY THE 3RD RESPONDENT .
EXHIBIT P1 (A)	COPY OF MAHAZAR ISSUED BY THE 4TH RESPONDENT .
EXHIBIT P1 (B)	COPY OF MAHAZAR ISSUED BY THE 5TH RESPONDENT .
EXHIBIT P2	COPY OF NOTICE ISSUED BY THE 2ND RESPONDENT .
EXHIBIT P3	COPY OF LETTER SUBMITTED BY THE PETITIONER BEFORE THE 6TH RESPONDENT .
EXHIBIT P4	COPY OF APPLICATION FILED BY THE PETITIONER BEFORE THE 4TH RESPONDENT
EXT.P4 (a)	COPY OF APPLICATION FILED BY THE PETITIONER BEFORE THE 5TH RESPONDENT
EXT.P5	COPY OF LETTER SUBMITTED BY THE PETITIONER BEFORE THE 7TH RESPONDENT
EXT.P6	COPY OF LETTER ISSUED BY THE 4TH RESPONDENT