2023:KER:15380

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P.

TUESDAY, THE 14TH DAY OF MARCH 2023/23RD PHALGUNA, 1944

O.P.(TAX).NO.9 OF 2016

AGAINST THE ORDER IN T.A.NO.57/2015 OF KERALA AGRICULTURAL INCOME TAX AND SALES TAX APPELLATE TRIBUNAL, ADDITIONAL BENCH,PALAKKAD

PETITIONER:

M/S.MADHAVARAJA CLUB
AGED 70 YEARS
ENGLISH CHURCH ROAD, PALAKKAD,
REPRESENTED BY ITS SECRETARY, GIRI NAIR.

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

RESPONDENTS:

1 THE COMMERCIAL TAX OFFICER (LUXURY TAX)
PALAKKAD.

2 KERALA AGRIL. INCOME TAX & SALES TAX APPELLATE TRIBUNAL, ADDL. BENCH, NOORANI, PALAKKAD-678004,
REPRESENTED BY ITS SECRETARY.

3 STATE OF KERALA
REPRESENTED BY ITS SECRETARY, TAXES DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 695001.

BY SRI. MOHAMMED RAFIQ, SPL. GOVT. PLEADER (TAXES)

THIS OP(TAX) HAVING COME UP FOR HEARING ON 02.03.2023 ALONG WITH O.P.(TAX).NO.23/2016 AND CONNECTED CASES, THE COURT ON 14.03.2023 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P.

TUESDAY, THE 14TH DAY OF MARCH 2023/23RD PHALGUNA, 1944

O.P.(TAX).NO.23 OF 2016

AGAINST THE ORDER IN T.A.NO.83/2015 OF KERALA AGRICULTURAL INCOME TAX AND SALES TAX APPELLATE TRIBUNAL, ADDITIONAL BENCH,PALAKKAD

PETITIONER:

M/S. MADHAVARAJA CLUB
ENGLISH CHURCH ROAD, PALAKKAD,
REPRESENTED BY ITS SECRETARY, GIRI NAIR.

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

RESPONDENTS:

1 **THE COMMERCIAL TAX OFFICER,**
PALAKKAD-678 001.

2 **KERALA AGRL. INCOME TAX & SALES TAX**
APPELLATE TRIBUNAL, ADDL. BENCH, NOORANI,
PALAKKAD-678 004, REPRESENTED BY ITS SECRETARY

3 **STATE OF KERALA**
REPRESENTED BY ITS SECRETARY, TAXES DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001

BY SRI. MOHAMMED RAFIQ, SPL. GOVT. PLEADER (TAXES)

THIS OP (TAX) HAVING COME UP FOR HEARING ON 02.03.2023 ALONG WITH OP (TAX).NO.9/2016 AND CONNECTED CASES, THE COURT ON 14.03.2023 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P.

TUESDAY, THE 14TH DAY OF MARCH 2023/23RD PHALGUNA, 1944

O.T.REV NO.97 OF 2017

AGAINST THE ORDER IN TA(VAT).NO.28/2015 OF THE KERALA VALUE ADDED TAX APPELLATE TRIBUNAL, ADDL. BENCH, PALAKKAD

REVISION PETITIONER/APPELLANT/ASSESSEE:

MADHAVARAJA CLUB
18/792, ENGLISH CHURCH ROAD, PALAKKAD.

BY ADV.SRI.SOJAN JAMES

RESPONDENT/RESPONDENT/REVENUE:

STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT (TAXES),
SECRETARIAT, THIRUVANANTHAPURAM - 695 001.

BY SRI. MOHAMMED RAFIQ, SPL. GOVT. PLEADER (TAXES)

THIS OTHER TAX REVISION (VAT) HAVING COME UP FOR HEARING ON 02.03.2023 ALONG WITH O.P(TAX).NO.9/2016 AND CONNECTED CASES, THE COURT ON 14.03.2023 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P.

TUESDAY, THE 14TH DAY OF MARCH 2023/23RD PHALGUNA, 1944

O.T.REV.NO.98 OF 2017

AGAINST THE ORDER IN T.A.(VAT).NO.29/2015 OF KERALA VALUE ADDED TAX APPELLATE TRIBUNAL, ADDITIONAL BENCH, PALAKKAD

REVISION PETITIONER/APPELLANT/ASSESSEE:

MADHAVARAJA CLUB
18/792, ENGLISH CHURCH ROAD,
PALAKKAD.

BY ADV.SRI.SOJAN JAMES
BY ADV.SMT.SHOBA ANNAMMA EAPEN

RESPONDENT/RESPONDENT/REVENUE:

STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT(TAXES),
SECRETARIAT, THIRUVANANTHAPURAM-695001.

BY SRI.MOHAMMED RAFIQ, SPL. GOVT. PLEADER (TAXES)

THIS OTHER TAX REVISION (VAT) HAVING COME UP FOR HEARING ON 02.03.2023 ALONG WITH OP (TAX).NO.9/2016 AND CONNECTED CASES, THE COURT ON 14.03.2023 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P.

TUESDAY, THE 14TH DAY OF MARCH 2023/23RD PHALGUNA, 1944

W.A.NO.601 OF 2021
AGAINST THE ORDER DATED 5.2.2021 IN W.P(C).NO.2942/2021 OF HIGH COURT OF KERALA

APPELLANT/PETITIONER:

M/S.MADHAVARAJA CLUB
ENGLISH CHURCH ROAD, PALAKKAD,
REPRESENTED BY ITS SECRETARY, VIMAL VENU.

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

RESPONDENTS/RESPONDENTS:

1 **THE STATE TAX OFFICER (LUXURY TAX),**
OFFICE OF THE DEPUTY COMMISSIONER,
STATE GST DEPARTMENT, PALAKKAD - 678 001.

2 **THE JOINT COMMISSIONER (APPEALS)**
STATE GST DEPARTMENT, PALAKKAD - 678 001.

3 **THE COMMISSIONER OF COMMERCIAL TAXES**
TAX TOWERS, KILLIPPALAM, KARAMANA,
THIRUVANANTHAPURAM - 695 002.

4 STATE OF KERALA
REPRESENTED BY ITS SECRETARY, TAXES DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 695 001.

BY SRI.MOHAMMED RAFIQ, SPL. GOVT. PLEADER (TAXES)

THIS WRIT APPEAL HAVING COME UP FOR HEARING ON 02.03.2023 ALONG WITH O.P(TAX).NO.9/2016 AND CONNECTED CASES, THE COURT ON 14.03.2023 DELIVERED THE FOLLOWING:

'C.R.'

J U D G M E N T

A.K. Jayasankaran Nambiar, J.

These O.P (Tax) cases, O.T Revision cases and Writ Appeal are taken up together for consideration since they pertain to the same assessee and involve a common issue regarding the applicability of the principle of mutuality in tax matters.

O.P.(TAX).No.9/2016; O.P.(TAX).No.23/2016 & W.A.No.601/2021:

THE FACTS IN BRIEF:

In O.P(Tax).No.9 of 2016, the petitioner M/s Madhavaraja Club impugns an order of the Kerala Sales Tax Appellate Tribunal that confirmed the demand of penalty on the petitioner under the Kerala Tax on Luxuries Act, 1976 (hereinafter referred to as the 'KTL Act' for brevity) for the assessment years 2009-10, 2010-11 and 2011-12. O.P.(Tax).No.23 of 2016 is filed by the same assessee viz. M/s Madhavaraja Club impugning the order of the Appellate Tribunal that conformed penalty on it under the KTL Act for the assessment year 2008-09. W.A.No.601 of 2021 is preferred by M/s

Madhavaraja Club aggrieved by the judgment of a learned Single Judge in W.P(C).No.2942/2021 that dismissed the writ petition that impugned the assessment orders and first appellate orders passed against the appellant under the KTL Act for the assessment years 2014-15, 2015-16, 2016-17 and 2017-18, and relegated the appellant to its alternate remedy of preferring appeals before the Appellate Tribunal against the first appellate orders. In all the above cases, the assessee M/s Madhavaraja Club had taken a specific contention before the lower authorities that in view of the principle of mutuality that applied to cases where a members' club supplied goods or provided luxury to its members, it could not be fastened with any tax liability under the KTL Act on the amounts collected from its members for providing them rooms/auditoriums on rent or other amenities against specified charges.

2. The mutuality principle recognises that if persons carry on a certain activity in such a way that there is a commonality between contributors of funds and participators in the activity, a complete identity between the two is then established. This identity is not snapped because the surplus that arises from the common fund is not distributed among the members. It is enough that there is a right of disposal over the surplus and in exercise of that right they may agree that on winding up, the surplus will be transferred to a club or association with similar activities. The surplus

that is made does not come back to the members of the club as shareholders of a company in the form of dividends upon their shares. Since the members perform the activities of the club for themselves, the fact that they incorporate a legal entity to do it for them makes no difference **(*See: State of West Bengal v. Calcutta Club Ltd – ((2019) 19 SCC 107 @ p.144*))**.

THE ARGUMENTS OF COUNSEL:

3. The argument of Sri. Harishankar Menon, the learned counsel for the petitioner-assessee in the O.P (Tax) cases is that the mutuality principle applies to insulate the club from paying tax on any charges collected from its members for providing amenities such. as rooms/auditoriums/halls on rent and the only amount on which tax can be levied and collected from it are the membership charges paid to it by the members that attract the levy under Section 4 (2A) of the KTL Act. It is his case that the decision of the Supreme Court in *Calcutta Club Ltd.* applies on all fours to the facts in his case and hence the penalty orders passed against the petitioner assessee under the KTL Act cannot be legally sustained. For the same reason, he also contends that the assessment orders and first appellate orders under the KTL Act for the assessment years 2014-15, 2015-16, 2016-17 and 2017-18 ought to be set aside and the assessing officer directed to re-do the assessment for the

said years under the KTL Act by excluding such part of the turnover as is covered by the mutuality principle.

4. *Per contra*, Sri. Mohammed Rafiq, the learned Special Government Pleader (Taxes) would contend that the mutuality principle has no application in the context of a levy of luxury tax under the KTL Act as has been found by a Division Bench of this Court in the petitioner's own case for an earlier assessment year viz. ***Madhavaraja Club v. The Commercial Tax Officer [Neutral Citation: 2013/KER/9816]***. It is his further contention, by placing reliance on the Division Bench decisions of this Court in ***Asianet Satellite Communications Ltd v. State of Kerala – [2010 (3) KLT SN 22 (C No.29)], Trivandrum Club v. Sales Tax Officer – [2012 (3) KLT 682], Lotus Club v. State of Kerala [Neutral Citation No. 2018/KER/40520]*** and the decisions of the Supreme Court in ***Express Hotels Private Ltd. v. State of Gujarat – [(1989) 3 SCC 677], State of Karnataka & Ors v. Drive-in Enterprises – [(2001) 4 SCC 60], Godfrey Phillips India Ltd v. State of UP – [(2005) 2 SCC 515]*** and ***State of WB & Ors. v. Purvi Communication Pvt. Ltd. - [(2005) 3 SCC 711]*** that the incidence of the levy under the KTL is on the enjoyment of the luxury and the person on whom the levy is imposed is that person who enjoys the luxury and that the provider of the luxury is merely the person who is liable to

collect the tax and pay it over to the government. Since the taxable event under the KTL Act is not the act of 'providing the luxury' but the 'enjoyment of luxury', the levy cannot be affected by the principle of mutuality as laid down by the Supreme Court in *Calcutta Club Ltd*.

WHAT THE LAW SAYS:

5. When construing the provisions of any taxing statute, it is useful to keep in mind the test that is often applied by courts to determine whether the tax in question is one that is backed by the authority of law viz. that for a levy to exist in point of law four components must exist – the nature of the tax which prescribes the taxable event, the person on whom the levy is to be imposed, the rate of the tax and the measure or value to which the rate will be applied (***See: Govind Saran Ganga Saran v. CST – [AIR 1985 SC 1041]***). The test, when applied, provides the answers to four cardinal questions viz. (i) what is the taxable event or the event that attracts the tax? (ii) who has to pay the tax? (iii) how much tax has to be paid? and (iv) how does one pay the tax? The answers to the above questions must be found in the taxing statute concerned for, in the absence of a clear charge or machinery to levy and assess tax in the primary legislation, the imposition of tax cannot be done [**(*See: Commissioner, Central Excise and Customs,***

Kerala v. Larsen and Toubro Limited and another - [2016 (1) SCC 170)].

6. The answer to question (i) is usually provided by the charging section of the statute concerned. It could be the earning of income as in the Income Tax Act, the manufacture of goods as in the Central Excise Act, the import of goods as in the Customs Act or the supply of goods and services as in the GST Act. Section 4 of the Kerala Tax on Luxuries Act is the charging section thereunder and it provides for the levy of a luxury tax on "luxury provided" by various entities and hence the taxable event under that Act is the "providing of luxury". Question (ii) seeks to find the person who is made responsible under the statute concerned to pay the tax to the government. Under the Kerala Tax on Luxuries Act, Section 4 (3) identifies that person as the 'Proprietor', which term is defined under Section 2 (h) therein as meaning the person who, for the time being, is in charge of the management of the hotel, house boat, hall, auditorium, home stay, hospital or kalyanamandapam or place of like nature, as the case may be. Question (iii) seeks to find the measure of the tax ie. the value on which, and the rate at which, the tax is to be paid. Sub-sections (2), (2A), (4) and (5) of Section 4 of the Act answer the said question by providing the value and the rate of tax applicable when various kinds of luxury are provided. The answer to

question (iv) that seeks the manner in which the tax is to be paid, is contained in the various provisions of the Act that deal with the procedure for registration of the 'proprietors' who provide the luxury, the collection of tax by the said 'proprietors' from the persons who enjoy the luxury so provided, the manner of payment of the tax so collected by the 'proprietors' to the government exchequer by filing returns, and the assessment of the 'proprietor' to determine whether the tax has been correctly paid.

7. A reading of the provisions of the KTL Act therefore clearly reveals that it is a tax on the enjoyment of a luxury, that is attracted at a point in time when such luxury is provided by a 'proprietor' to another person for the latter's enjoyment. The incidence and levy of the tax is on the "proprietor" although the ultimate impact of the tax may be on the person who enjoys the luxury that is provided. The 'proprietor' is also the person who is made responsible under the Act to register himself, collect the tax from the person who enjoys the luxury, pay the applicable tax to the government exchequer along with the filing of his returns and subject himself to an assessment under the Act. It is against the backdrop of the said scheme of the KTL Act that we have to consider the issue as to whether, when a membership club provides a luxury to its member, the doctrine of mutuality will apply to insulate the club and its member from the levy of tax under the Act?

8. The issue of whether membership clubs, whether incorporated or not, would be liable to sales tax on the supply of goods to their members came up for consideration before the Supreme Court in ***State of West Bengal v. Calcutta Club Ltd – [(2019) 19 SCC 107]***. After an exhaustive survey of the Indian and English law on the doctrine of mutuality it was held as follows @ para 32 of the judgment:

> " [I]t is clear that if persons carry on a certain activity in such a way that there is a commonality between contributors of funds and participators in the activity, a complete identity between the two is then established. This identity is not snapped because the surplus that arises from the common fund is not distributed among the members; it is enough that there is a right of disposal over the surplus, and in exercise of that right they may agree that on winding up, the surplus will be transferred to a club or association with similar activities. Most importantly, the surplus that is made does not come back to the club as shareholders of a company in the form of dividends upon their shares. Since the members perform the activities of the club for themselves, the fact that they incorporate a legal entity to do it for them makes no difference....What is of essence, therefore, in applying this doctrine is that there is no sale transaction between two persons, as one person cannot sell goods to itself."

9. The court then went on to consider whether the 46th Amendment to the Constitution had done away with the doctrine of mutuality, as applied to members' clubs. After noticing that the 61st Law Commission Report had in fact recommended against any imposition of tax on the supply of goods by a members' club to its members because a member of such a club "really takes his own goods", and that the framers of the 46th Amendment ignored the said recommendation and went on treat a supply of goods by <u>any</u>

unincorporated association or body of persons to their members, for cash, deferred payment or other valuable consideration, as deemed sales for the purposes of sales tax, the court found that notwithstanding the amendment, the supply of goods by a members' club to its members did not satisfy the requirement of there being two persons in the transaction viz. a person making the supply and a person to whom the supply was made. In other words, where the supply of goods was to oneself the deeming provision had no application. The court further held that in the absence of any language in clause (e) of Article 366 (29-A) of the Constitution that expressly made the supply of goods by members' clubs to its members taxable, it could not be said that the doctrine of mutuality had been done away with. (***See: State of West Bengal v. Calcutta Club Ltd – [(2019) 19 SCC 107 @ pp.149-150].***

10. As regards the applicability of their findings to the levy of service tax, the court found as follows @ para 79 of the judgment;

> "[I]f the doctrine of agency, trust and mutuality is to be applied qua members' clubs, there has to be an activity carried out by one person for another for consideration. We have seen how in the judgment relating to sales tax, the fact is that in members' clubs there is no sale by one person to another for consideration, as one cannot sell something to oneself. This would apply on all fours when we are to construe the definition of 'service' under S.65-B (44) as well."

11. The legal position that emerges for our purposes is that, in the case of members' clubs, by virtue of the doctrine of mutuality that applies, the supply of goods/services/amenities/luxuries by the club to its members will not attract the levy of tax because there is no supply effected by one person to another for consideration. The absence of two distinct persons to a transaction viz. a supplier/provider of goods/services/amenities/luxuries and a recipient thereof, makes the transaction a supply to oneself, which cannot be taxed under the statute. It is also significant that under the KTL Act, there is no express provision, save Section 4 (2A) thereunder, that provides for a levy of tax on the providing of a luxury by a members' club to its members. In the absence of such an express provision, the doctrine of mutuality that otherwise governs the transaction between a members' club and its members will continue to insulate the club and its members from the levy of luxury tax, save under Section 4 (2A) thereof.

DISCUSSION & FINDINGS:

12. In the light of the aforesaid discussion, we must now deal with the specific contentions of the learned Government Pleader, relying on the decisions of the division bench of this court in ***M/s Lotus Club v. State of Kerala & Ors – [Neutral Citation Number: 2018/KER/40520]*** and ***M/s***

Madhavaraja Club v. The Commercial Tax Officer (Luxury Tax) & Ors – [Neutral Citation Number: 2013/KER/9816], that in the former judgment, this court has clearly held that the incidence of tax is on the person enjoying the luxury and hence, although the luxury is provided to a member of the club by the club itself, the doctrine of mutuality will have no application, and that in the latter judgment, another division bench of this court has, in the appellant's own case under the KTL Act for an earlier assessment year, clearly held that the doctrine of mutuality is not apposite in the context of the KTL Act. We have gone through the said judgments cited by the learned government pleader. In *Lotus Club*, the Division Bench essentially followed an earlier division bench judgment of this Court in ***Trivandrum Club v. Sales Tax Officer (Luxury Tax) – [2012 (3) KLT 682]*** that unambiguously held that under the KTL Act, the charging section recognised the club as the person liable to luxury tax. The Division Bench therefore recognised the club as the person on whom the incidence of tax fell. Since the later division bench in *Lotus Club* did not find any cause for doubting the propositions laid down in *Trivandrum Club* and dismissed the appeal preferred by Lotus Club by following the decision in *Trivandrum Club*, we cannot read the observations of the Division Bench in *Lotus Club* as having laid down the proposition that the incidence of tax under the KTL Act is on the person enjoying the luxury and not on the 'proprietor' who provides

the luxury.

13. The reliance placed by the learned Government Pleader on the decisions in ***Godfrey Philips India Limited v. State of UP – [(2005) 2 SCC 515]*** and ***State of Karnataka & Ors v. Drive-in Enterprises – [(2001) 4 SCC 60]*** in support of his contention that the incidence of luxury tax is on the enjoyment of luxury and not on the providing of luxury is also misplaced. The said decisions considered the issue of legislative competence of the respective legislatures while imposing the levy of luxury tax. It was in that context that the Supreme Court found that the levy of luxury tax was on the enjoyment of the luxury and hence, even if the incidence of tax was on the 'turnover of stock of luxuries' or on the 'admission of cars/motor vehicles inside the drive in theatre', as the case may be, in pith and substance, the levy of tax was on a luxury and therefore within the competence of the respective legislatures to levy, as Entry 62 of List II under the Seventh Schedule to the Constitution authorised the levy of "*Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling.*" To the same effect is the judgment of the Division Bench of this court in ***Asianet Satellite Communications Ltd v. State of Kerala – [2010 (3) KLT SN 22 (C.No.29)]*** as also the judgments of the Supreme Court in *Express Hotels and Purvi Communication [supra]***.** The observations of the

court in the said judgments cannot have the effect of altering the taxable event under the Kerala Tax on Luxuries Act, the charging provision of which is specific when it states that the levy of tax is on 'luxury provided' meaning thereby that it is levied when the luxury is provided.

14. Similarly, the observation of the division bench of this court in *M/s Madhavaraja Club* that the doctrine of mutuality is relevant only for the purposes of the Income Tax Act and is not apposite in the context of the KTL Act cannot be seen as laying down the correct law in the light of the subsequent judgment of the Supreme Court in *Calcutta Club Ltd* where the doctrine of mutuality was held applicable in the context of legislations regulating the levy of indirect taxes such as VAT and Service Tax. We are of the view that the principle recognised in *Calcutta Club Ltd*, that the absence of two distinct persons to a transaction viz. a supplier/provider of goods/ services/ amenities/ luxuries and a recipient thereof, makes the transaction a supply to oneself, which cannot be taxed under the statute, applies equally to the KTL Act which contemplates the levy of tax whenever a luxury is provided by one specified person to another.

We therefore find that the mutuality principle will apply to insulate the petitioner club from the levy of tax under the KTL Act, save under Section 4 (2A) thereunder, on charges collected from its members for amenities

provided to them. Since it is not in dispute that the petitioner club has paid the tax in terms of Section 4 (2A) during the assessment years in question, we allow O.P (Tax).No.9 of 2016 and O.P (Tax).No.23 of 2016 by setting aside the orders of the Appellate Tribunal impugned therein and the orders of penalty passed against the petitioner under the KTL Act for the assessment years 2008-09, 2009-10, 2010-11 and 2011-12. We also allow W.A.No.601 of 2021 by setting aside the judgment of the learned Single Judge in W.P(C).No. 2942/2021 and allowing the writ petition by quashing the assessment orders and first appellate orders passed against the appellant under the KTL Act for the assessment years 2014-15, 2015-16, 2016-17 and 2017-18. The assessing authority shall proceed to complete the assessment of the appellant club under the KTL Act for the aforesaid assessment years afresh by excluding that part of the turnover for the said years, as is covered by the mutuality principle discussed above. The assessing authority shall complete the said exercise within a period of three months from the date of receipt of a copy of this judgment.

O.T (Rev.).Nos.97 & 98 of 2017:

O.T Revision No.97 of 2017 is preferred by M/s Madhavaraja Club impugning the order of the Kerala Value Added Tax Appellate Tribunal that confirmed an assessment order passed against it by the assessing authority

under the KVAT Act for the assessment year 2012-13. In O.T Revision.No.98 of 2017, the same assessee impugns the order of the Kerala Value Added Tax Appellate Tribunal that confirmed an assessment order passed against it by the assessing authority under the KVAT Act for the assessment year 2013-14. Significantly, the assessee M/s Madhavaraja Club did not take a contention based on the mutuality principle at any stage before the lower authorities. There is no question of law based on the mutuality principle raised in the O.T. Revisions before us either. Despite that, however, we feel that since there has been a subsequent declaration of the law by the Supreme Court in ***State of West Bengal v. Calcutta Club Ltd. - [(2019) 19 SCC 107]***, that will have a bearing on the KVAT assessments completed against the petitioner club for the assessment years 2012-13 and 2013-14 that are covered in these O.T. Revisions, the matter requires to be re-adjudicated afresh by the assessing authority. Accordingly, we allow the O.T. Revisions by setting aside the orders of the Appellate Tribunal impugned herein and remitting the matters to the assessing authority for *de novo* assessment taking note of the observations in this judgment as also the applicability of the mutuality principle to the assessment of members' clubs under the KVAT Act, as declared by the Supreme Court in *Calcutta Club Ltd*. The assessing authority concerned shall complete the asessments afresh, as directed, after hearing the petitioners and pass fresh assessment

orders for the assessment years 2012-13 and 2013-14 under the KVAT Act within a period of three months from the date of receipt of a copy of this judgment.

O.P. (Tax).No.9 of 2016, O.P. (Tax).No.23 of 2016, O.T. Revision No.97 of 2017, O.T. Revision No.98 of 2017 and W.A.No.601 of 2021 are disposed as above.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

Sd/-
MOHAMMED NIAS C.P.
JUDGE

prp/

APPENDIX OF O.P(TAX).NO.9/2016

PETITIONER'S EXHIBITS:

EXT.P1.	COPY OF PENALTY ORDER ISSUED BY THE 1ST RESPONDENT FOR THE YEAR 2009-10.
EXT.P1A.	COPY OF PENALTY ORDEDR ISSUED BY THE 1ST RESPONDENT FOR THE YEAR 2010-2011.
EXT.P1B.	COPY OF PENALTY ORDEDR ISSUED BY THE 1ST RESPONDENT FOR THE YEAR 2011-2012.
EXT.P2.	COPY OF ORDEDR ISSUED BY THE DEPUTY COMMISSIONER (APPEALS), ERNAKULAM.
EXT.P3.	COPY OF APPEAL FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT FOR THE YEAR 2009-10.
EXT.P3A.	COPY OF APPEAL FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT FOR THE YEAR 2010-11
EXT.P3B.	COPY OF APPEAL FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT FOR THE YEAR 2011-12
EXT.P4.	COPY OF ORDER ISSUED BY THE 2ND RESPONDENT.

APPENDIX OF O.P.(TAX).NO.23/2016

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF PENALTY ORDER ISSUED BY THE 1ST RESPONDENT FOR THE YEAR 2008-09.

EXT.P2: COPY OF ORDER ISSUED BY THE DEPUTY COMMISSIONER (APPEALS), ERNAKULAM.

EXT.P3: COPY OF APPEAL FIELD BY THE PETITIONER BEFORE THE 2ND RESPONDENT FOR THE YEAR 2008-09.

EXT.P4: COPY OF ORDER ISSUED BY THE 2ND RESPONDENT.

EXT.P5: COPY OF ORDER IN OP (TAX) NO.9/16 OF THIS HON'BLE COURT.

APPENDIX OF OT.REV.NO.97/2017

PETITIONER'S ANNEXURES:

ANNEXURE I	**A TRUE COPY OF THE ASSESSMENT FOR THE YEAR 2012-2013 DATED 25.11.2014.**
ANNEXURE II	**A TRUE COPY OF THE ORDER FOR THE AC APPEALS PALAKKAD IN KVAT NO.843/14 DATED 16.3.2015.**
ANNEXURE III	**A CERTIFIED COPY OF THE ORDER OF THE TRIBUNAL IN TAVAT 28/15 DATED 30.9.15.**
ANNEXURE IV	**A TRUE COPY OF THE ORDER IN RECTIFICATION PETITION RP NO.6 OF 2016 DATED 19.10.2016.**
ANNEXURE V	**A TRUE COPY OF THE MODIFIED ASSESSMENT ORDER FOR THE YEAR 2012-2013 DATED 20.6.2016.**

APPENDIX OF O.T.REV.NO.98/2017

PETITIONER'S ANNEXURES:

ANNEXURE I	**A TRUE COPY OF THE ASSESSMENT FOR THE YEAR 2013-2014 DATED 25.11.2014.**
ANNEXURE II	**A TRUE COPY OF THE ORDER FOR THE AC APPEALS PALAKKAD IN KVAT NO.843/14 DATED 16.3.2015.**
ANNEXURE III	**A CERTIFIED COPY OF THE ORDER OF THE TRIBUNAL IN RAVAT 29/15 DATED 30.9.15.**
ANNEXURE IV	**A CERTIFIED COPY OF THE ORDER IN RECTIFICATION PETITION RP NO, 7 OF 2016 DATED 19.10.2016.**
ANNEXURE V	**A TRUE COPY OF THE MODIFIED ASSESSMENT ORDER FOR THE YEAR 2013-2014 DATED 20.6.2016.**

RESPONDENTS ANNEXURES: NIL.

//TRUE COPY//

P.S. TO JUDGE