IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 11TH DAY OF DECEMBER 2019 / 20TH AGRAHAYANA, 1941

WP(C).No.33446 OF 2019(E)

PETITIONER:

SRI KUBERA CONSTRUCTIONS PVT. LTD.,
BALAJI CELEBRATION 'B' WING, NEAR GANAPATI MANDIR,
VISHRAMBAG-SANGLI-416415, REPRESENTED BY ITS BUSINESS
DEVELOPMENT OFFICER M.K.SASIDHARAN, AGED 55 YEARS,
S/O.M.K.KUMARAN, RESIDING AT MUCKOLA NIVAS,
MUNDOOR.P.O., TRICHUR-680541, KERALA.

BY ADVS.
SRI.GEORGE VARGHESE(PERUMPALLIKUTTIYIL)
SRI.A.R.DILEEP
SRI.P.J.JOE PAUL
SRI.MANU SRINATH
SRI.RAJAN G. GEORGE

RESPONDENTS:

1 STATE OF KERALA,
REPRESENTED BY CHIEF SECRETARY, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM-695001.

2 PRINCIPAL SECRETARY TO GOVERNMENT OF KERALA,
STATE GOODS AND SERVICES TAX DEPARTMENT, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM-695001.

3 COMMISSIONER OF STATE GOODS AND SERVICES TAX,
TAX TOWERS, 4TH FLOOR, KARAMANA, TRIVANDRUM-695002.

4 ASSISTANT COMMISSIONER OF STATE TAX,
TAX TOWER, 4TH FLOOR, KARAMANA, TRIVANDRUM-695002.

5 INSPECTING ASSISTANT COMMISSIONER,
SGST DEPARTMENT, TAX TOWER, 4TH FLOOR, KARAMANA,
TRIVANDRUM-695002.

6 STATE TAX OFFICER,
STO-3, FIRST CIRCLE, SGST DEPARTMENT, TAX TOWER, 4TH
FLOOR, KARAMANA, TRIVANDRUM-695002.

7 STATE TAX OFFICER,
INVESTIGATION BRANCH-I, 5TH FLOOR, TAX TOWER,
KARAMANA, TRIVANDRUM-695002.

**8 KERALA STATE IT INFRASTRUCTURE LTD.,
TC 14/196/2, CHANDRASEKHARAN NAIR STADIUM,
THIRUVANANTHAURAM-695033, REPRESENTED BY ITS
MANAGING DIRECTOR, TC.14/196/2, CHANDRASEKHARAN
NAIR STADIUM, THIRUVANANTHAPURAM-695033.**

**9 MANAGING DIRECTOR,
KERALA STATE IT INFRASTRUCTURE LTD., TC.14/196/2,
CHANDRASEKHARAN NAIR STADIUM, THIRUVANANTHAPURAM-
695033.**

**R8-9 BY ADV. SRI.K.A.ABDUL SALAM
R8-9 BY ADV. SRI.SUNIL V.MOHAMMED**

OTHER PRESENT:

GOVERNMENT PLEADER DR THUSHARA JAMES

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 11.12.2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner company has approached this court aggrieved by Exts.P24 and P25 assessment orders passed against it under the Central Goods and Services Tax Act, 2017. In the writ petition, it is its case that the assessments have been concluded against it without taking note of the returns filed by it, which would have indicated the extent of the turn over that could have been subjected to assessment. Contrary to this, the assessments have been completed by relying on past assessments of the petitioner, thereby resulting in an exaggerated demand against the petitioner. It is further stated that, consequent to Exts.P24 and P25 orders, Ext.P27 notice has also been issued to the petitioner threatening it with coercive steps for recovery of the amounts confirmed against it by Exts.P24 and P25 assessment orders.

2. I have heard the learned counsel for the petitioner, the learned Standing Counsel for respondents Nos.8 and 9 and the learned Government Pleader for the official respondents of the State.

3. On a consideration of the facts and circumstances of the case as also the submissions made across the Bar, I find that Exts.P24 and P25 orders have been passed in terms of Section 62 of the CGST Act, after finding that the petitioner had not furnished the necessary returns within the time contemplated under the Act for filing the same. It was therefore that the assessments were completed on best judgment basis

as against the petitioner. I also note from the assessment orders impugned that, had the petitioner availed the opportunity of furnishing the returns within a period of 30 days from the date of the aforesaid assessment orders, the assessment would have been automatically withdrawn and the petitioner would have obtained a fresh opportunity to produce the relevant material for the purposes of a proper assessment. The said facility was not, however, availed by the petitioner for reasons best known to it. Under such circumstance, I am of the view that the only alternative for the petitioner is to approach the statutory Appellate Authority through an appeal against Exts.P24 and P25 assessment orders. The challenge in the writ petition against Exts.P24 and P25 orders cannot be maintained in view of the availability of an effective alternate remedy against the assessment orders impugned herein because I find that the assessment orders do not suffer from any jurisdictional error or violation of the rules of natural justice.

4. Taking note of the submission of the learned counsel for the petitioner that the petitioner would require some time to move the Appellate Authority and that he is faced with immediate threat of coercive steps for recovery of the amounts confirmed against him by Exts.P24 and P25 assessment orders, I direct that recovery steps for recovery of amounts confirmed against the petitioner by Exts.P24 and P25 assessment orders shall be kept in abeyance for a period of three weeks so as to enable the petitioner to move the Appellate Authority through an appeal against Exts.P24 and P25 assessment orders in the

mean while. The petitioner shall produce a copy of the writ petition along with a copy of this judgment before the respondents, for further action.

(Sd/-)

A.K.JAYASANKARAN NAMBIAR

JUDGE

sah

APPENDIX

PETITIONER'S/S EXHIBITS:

EXHIBIT P1	**A TRUE COPY OF THE CERTIFICATE OF INCORPORATION OF THE PETITIONER AS PVT. LTD. COMPANY.**
EXHIBIT P2	**A TRUE COPY OF THE RELEVANT PAGES OF THE COMPOSITE TENDER DOCUMENT INCLUDING NOTICE INVITING TENDER, RELEVANT PAGE OF GENERAL CONDITIONS, SPECIAL CONDITIONS, TECHNICAL SPECIFICATION OF TENDER NO.KSITIL/TC/ITB/2017-18/001M DATED 17.5.2017.**
EXHIBIT P3	**A TRUE COPY OF THE MINUTES OF THE PRE-BID MEETING ON 15.6.2017.**
EXHIBIT P4	**A TRUE COPY OF LETTER DATED 15.7.2017.**
EXHIBIT P5	**A TRUE COPY OF LETTER DATED 24.7.2017 OF THE PETITIONER SUBMITTED TO THE 9TH RESPONDENT.**
EXHIBIT P6	**A TRUE COPY OF WORK ORDER KSITIL/TC/ITB/17-18/WO-001 DATED 7.9.2017 ISSUED BY THE 8TH RESPONDENT.**
EXHIBIT P7	**A TRUE COPY OF AGREEMENT DATED 11.1.2018 EXECUTED BETWEEN THE 9TH RESPONDENT AND THE PETITIONER.**
EXHIBIT P8	**A TRUE COPY OF FIRST RUNNING ACCOUNT BILL DATED 20.2.2018 FOR RS.10,49,31,114/-.**
EXHIBIT P9	**A TRUE COPY OF 2ND RUNNING ACCOUNT BILL DATED 28.4.2018 FOR RS.4,57,862,163/-.**
EXHIBIT P10	**A TRUE COPY OF LETTER DATED 20.06.2018.**
EXHIBIT P11	**A TRUE COPY OF BILL DATED 15.7.2018 SUBMITTED FOR AN AMOUNT OF RS.5,84,60,237/-.**

EXHIBIT P12	**A TRUE COPY OF BILL DATED 8.8.2018 FOR RS.5,57,59,555/- INCLUDING GST OF RS.85,05,694.88(CGST RS.42,52,847.44 & SGST RS.42,52,847.44).**
EXHIBIT P13	**A TRUE COPY OF BILL DATED 5.10.2018 OF RS.5,37,35,744/-.**
EXHIBIT P14	**A TRUE COPY OF LETTER DATED 8.10.2018.**
EXHIBIT P15	**A TRUE COPY OF LETTER KSITIL/TC/ITB/2018-19 DATED 12.10.2018 ISSUED BY THE 8TH RESPONDENT.**
EXHIBIT P16	**A TRUE COPY OF LETTER NO.IND.R.W.-B2/317/2018 FINANCE DATED 19.12.2018.**
EXHIBIT P17	**A TRUE COPY OF THE GSTR-1, RETURNS FILED FOR THE ABOVE PERIOD.**
EXHIBIT P18	**A TRUE COPY OF GSTR-3B RETURNS.**
EXHIBIT P19	**A TRUE COPY OF LETTER DATED 2.5.2019 SENT BY THE PETITIONER TO THE 8TH RESPONDENT.**
EXHIBIT P20	**A TRUE COPY OF THE CIRCULAR NO.18/2019/FIN DATED 1.3.2019.**
EXHIBIT P21	**A TRUE COPY OF GSTR 3A NOTICE BY THE GST OFFICER,SGST OFFICER, 1ST CIRCLE, TRIVANDRUM.**
EXHIBIT P22	**A TRUE COPY OF LETTER DATED 28.10.2019.**
EXHIBIT P23	**A TRUE COPY OF REPLY DATED 21.11.2019.**
EXHIBIT P24	**A TRUE COPY OF THE ASSESSMENT ORDERS IN FORM ASMT-13.**
EXHIBIT P25	**A TRUE COPY OF ASSESSMENT ORDERS IN FORM ASMT-13.**
EXHIBIT P26	**A TRUE COPY OF DETAILS OF THE ASSESSMENT MADE UNDER SECTION 62 OF THE GST ACT 2017.**
EXHIBIT P27	**A TRUE COPY OF NOTICE FIR/73/19-20/C1/STO (1B)/TVPM DATED 20.11.2019 ISSUED BY THE 7TH RESPONDENT.**

EXHIBIT P28 **A TRUE COPY OF LETTERS SUBMITTED BY THE PETITIONER.**

//TRUE COPY// **P.A. TO JUDGE**