IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR &

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

THURSDAY, THE 17TH DAY OF OCTOBER 2019 / 25TH ASWINA, 1941

WA.No.2022 OF 2019

AGAINST THE JUDGMENT IN WP(C) 23927/2018(M) OF THIS COURT

APPELLANT/PETITIONER:

EAGLE HOME APPLIANCES PVT. LTD
PULICKAL BUILDING, POWER HOUSE ROAD, ERNAKULAM, KOCHI 682 018 (REPRESENTED BY SRI KIRAN PAUL, AUTHORIZED SIGNATORY)
BY ADVS.
SRI.K.N.SREEKUMARAN
SRI.P.J.ANILKUMAR (A-1768)
SRI.N.SANTHOSHKUMAR

RESPONDENTS:

1. ASSISTANT COMMISSIONER, SPECIAL CIRCLE -1
STATE GOODS AND SERVICES TAX DEPARTMENT, THEVARA, ERNAKULAM, KOCHI 682 015

2. COMMISSIONER OF STATE TAXES,
TAX TOWER, KARAMANA, THIRUVANANTHAPURAM 695 002

3. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY TO TAXES, SECRETARIAT, THIRUVANANTHAPURAM 695 002

4. INSPECTING ASSISTANT COMMISSIONER,
STATE GOODS AND SERVICES TAX DEPARTMENT, KAKKANAD, KOCHI 682 030

OTHER PRESENT:

SR.GP.SRI.MOHAMMED RAFIQ

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 17.10.2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

S. MANIKUMAR, CJ.
&
C.K. ABDUL REHIM, J.

Writ Appeal No. 2022 OF 2019

DATED THIS THE 17th DAY OF OCTOBER, 2019

J U D G M E N T

Abdul Rehim, J.

The appellant herein is the petitioner in W.P.(C) 23927/2018, challenging dismissal of the writ petition through the judgment dated 11th January, 2019. The respondents herein are the respondents in the writ petition.

2. Ext.P1 order of assessment was challenged in the writ petition mainly raising the ground that, the said order is unsustainable because of the challenges raised against the constitutional validity of Section 174 of the Kerala State Goods and Service Tax Act(KSGST Act, for short). The learned Single Judge dismissed the writ petition by holding that the issue involved stands squarely covered against the appellant through

the judgment dated 11th January, 2019 in W.P.(C) 11335/2018 and connected cases.

3. Contention raised in this writ appeal is that, the learned Single Judge had omitted to consider the other grounds raised against the impugned order of assessment. It is pointed out that the assessment proceedings itself was initiated beyond the time limit stipulated in the relevant provisions of the Act and therefore the entire assessment proceedings stood barred by limitation.

4. Learned Government Pleader appearing for the respondents, *per contra* submitted that, the question of limitation was not raised in the writ petition as a ground of challenge against the impugned order of assessment. Learned counsel for the appellant pointed out that the question regarding limitation was raised in the objections submitted before the assessing authority and the said authority had repelled those contentions. According to him, being a question of law, for

raising dispute regarding the bar of limitation, there need not be any specific pleading, but the appellant is entitled to raise it in challenge against the impugned order.

5. We take note of the fact that the judgment in W.P.(C) 11335/2018 and connected cases covers only the question regarding constitutional validity of Section 174 of the KSGST Act. In the appeal memorandum, the appellant had raised a contention that the Single Judge had omitted to consider the ground of limitation. We take note of the fact that such a question was raised before the assessing authority and it was adjudicated therein. Therefore we are of the opinion that the question of limitation, being one which could be considered as a question of law, can be permitted to be raised in the writ petition. Since no grounds except validity of Section 174 of KSGST Act was considered in the impugned judgment, we find it appropriate to remit the writ petition for consideration of other grounds available to the appellant, in particular the question of

limitation.

6. Therefore the above writ appeal is hereby allowed. The impugned judgment in W.P.(C) 23927/2018 is hereby set aside. The writ petition is restored on to the files of this court for fresh consideration and disposal by the Single Judge, on the points mentioned as above

7. The Registry shall post the writ petition before the learned Single Judge dealing with the subject matter, as per the roster.

8. Interim order if any existed as on the date of the dismissal of the writ petition shall stand revived and shall continue to be in force.

Sd/- S. MANIKUMAR
(Chief Justice)

Sd/- C.K. ABDUL REHIM
(Judge)

ul/- // True copy //

P.S. to Judge.