IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

&

THE HONOURABLE MR. JUSTICE R. NARAYANA PISHARADI

THURSDAY, THE 18TH DAY OF JULY 2019 / 27TH ASHADHA, 1941

WA.No.1623 of 2019

AGAINST THE JUDGMENT IN WP(C) 39969/2018 of HIGH COURT

APPELLANT/PETITIONER:

IMPESSARIO EVENT MANAGEMENT INDIA LTD.,
2ND FLOOR, GANDHI NAGAR COMPLEX, OPP. INDIRA GANDHI HOSPITAL, KADAVANTHRA P.O., KOCHI 682 020.
(REPRESENTED BY SRI.HAREESH BABU P.B., MANAGING DIRECTOR).

BY ADVS.SRI.K.N.SREEKUMARAN
SRI.N.SANTHOSHKUMAR
SRI.P.J.ANILKUMAR (A-1768)

RESPONDENTS/RESPONDENTS:

1 STATE TAX OFFICER,
2ND CIRCLE, STATE GOODS AND SERVICE TAX DEPARTMENT, TRIPUNITHURA - 682 301.

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.

OTHER PRESENT:

SR. G.P. SRI MOHAMMED RAFEEQ

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 18.07.2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.K.ABDUL REHIM
&
R.NARAYANA PISHARADI,JJ.
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W.A. No.1623 of 2019
- -
Dated this the 18th day of July,2019

J U D G M E N T

C.K.ABDUL REHIM, J.

Petitioner in W.P.(C) No.39969 of 2018 is the appellant herein, challenging dismissal of the writ petition through the judgment dated 22nd January,2019. Respondents herein are the respondents in the writ petition.

2. Exts.P1 to P8 orders of assessment were challenged in the writ petition by raising a contention that the proceedings of the assessments were initiated beyond the period of limitation stipulated under Section 25(1) of the Kerala Value Added Tax *Act,2003('KVAT Act' for short*]. *Inter alia,* the appellant challenged the constitutional validity of Section 174 of the Kerala State Goods and Service Tax Act,

2017 [KSGST Act]. The writ petition was dismissed by the learned Single Judge along with a batch of other cases by holding that the issue involved stands squarely covered against the appellant by virtue of the judgment in W.P.(C)No.11335 of 2018 and connected cases, dated 11th January,2019.

3. Learned counsel for the appellant contended that, the Single Judge had failed to consider the question of limitation raised in challenge against the impugned assessments. It is also pointed out that the learned Single Judge had failed to appreciate the contention raised based on the decision reported in **Philips India Limited v. Assistant Commissioner (Assessment), Special Circle,Aluva & Ors. [(2017)25 KTR 209(Ker.)]**, which was affirmed by a Division Bench in Writ Appeal No.230 of 2017.

4. Learned Government Pleader appearing on behalf of the respondents, *per contra,* contended that the question of limitation will not apply in the case of assessments finalised against the appellant, in view of the specific provision contained in sub-section (2) of Section 25 of the KVAT Act.

However, it is conceded that the judgment in W.P.(C) No.11335 of 2018 and connected cases covers only the issue regarding validity of Section 174 of the KSGST Act. Learned counsel for the appellant submitted that the appellant is not pursuing the challenges raised against the findings rendered with respect to validity of Section 174 of the KSGST Act. However, it is pointed out that the omission to consider the grounds raised in the writ petition based on Section 25(1) KVAT Act, needs re-consideration.

5. We are of the opinion that a remand of the writ petition to the Single Judge for adjudication on the question as to whether the impugned assessments are hit by Section 25(1) of the KVAT Act, would suffice to meet the ends of justice.

6. Hence, the above writ appeal is hereby allowed. The impugned judgment in W.P.(C) No.39969 of 2018 is hereby set aside. The writ petition is restored on to the files of this court. The Registry is directed to post the writ petition for fresh disposal in accordance with the observations contained herein above, before the Single Judge dealing with the subject matter, as per the roster.

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

Sd/-

C.K.ABDUL REHIM

JUDGE

Sd/-

R. NARAYANA PISHARADI

JUDGE

DST

//True copy//

PA.To Judge