

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE C.K.ABDUL REHIM

&

THE HONOURABLE MR. JUSTICE R. NARAYANA PISHARADI

TUESDAY, THE 11TH DAY OF JUNE 2019 / 21ST JYAISHTA, 1941

WA.No.1141 of 2019

AGAINST THE JUDGMENT IN WP(C) 41831/2018 of HIGHCOURT DATED
22.01.2019

APPELLANT/PETITIONER:

AYURVFEDA YOGA VILLA,
NEAR KURUVA ISLAND, PALVELICHAM,BAVALI P.O.
WAYANAD

BY ADVS.
SRI.A.KUMAR
SMTG.MINI (1748)
SRI.P.J.ANILKUMAR
SRI.P.S.SREE PRASAD

RESPONDENTS/RESPONDENTS:

- 1 STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY
GOVERNMENT OF KERALA, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001
- 2 THE COMMISSIONER
STATE GOODS AND SERVICE TAX DEPARTMENT
THIRUVANANTHAPURAM-695001.
- 3 DEPUTY COMMISSIONER OF STATE TAX
STATE GOODS AND SERVICE TAX DEPARTMENT
AYYAPPA COMPLEX, KALPETTA, WAYANAD - 673 121
- 4 STATE TAX OFFICER,
OFFICE OF STATE TAX OFFICER
MANATHAVADY - 670 645

SR.GP-SRI.MOHAMMED RAFIQ

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 11.06.2019,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**C.K. ABDUL REHIM
&
R. NARAYANA PISHARADI, JJ.**

W.A No. 1141 of 2019

Dated this the 11th day of June, 2019

JUDGMENT

Abdul Rehim,J

The petitioner in WP(C) No.41831/2018 is in appeal challenging dismissal of the writ petition. The respondents herein are the respondents in the writ petition.

2. Ext.P3 order of assessment with respect to the year 2014-15 was challenged in the writ petition mainly contending that tax imposed against sale of medicine in the course of treatment done at the appellant's hospital, is bad and unsustainable in view of the settled legal position. Inter alia, the appellant challenged the constitutional validity of Section 174 of the Kerala State Goods and Service Tax Act (KSGST Act) and thereby the sustainability of the impugned assessment.

3. The writ petition was dismissed along with a batch of other cases by holding that the issue involved stands squarely

covered against the appellant through the judgment in WP(C) No. 11335/2018 and connected cases, dated 11.01.2019.

4. Learned counsel for the appellant pointed out that, the issue covered by the judgment in WP(C) No. 11335/2018 and connected cases pertains only with respect to the validity of Section 174. It is pointed out that the learned Single Judge had omitted to consider and adjudicate upon other grounds raised in the writ petition.

5. The fact that the judgment in WP(C) No. 11335/2018 covers only the question of validity of Section 174 of the KSGST Act, is conceded by the learned Government Pleader appearing for the respondents. It is further conceded that, against the judgment in WP(C) No. 11335/2018 and connected cases, a lot of writ appeals filed are already admitted and is pending disposal before this Court.

6. Under such circumstances, we are of the considered opinion that a remittance of the writ petition for fresh consideration and disposal on the grounds raised other than the validity of Section 174 of the KSGST Act, would serve the ends of justice.

7. Hence, the above writ appeal is hereby allowed. The impugned judgment in WP(C) No. 41831/2018 dated 22.01.2019 is hereby set aside. The writ petition is restored on the files of this Court. The Registry is directed to post the writ petition before the learned Single Judge dealing with the subject matter as per the roster, for fresh consideration and disposal as directed above.

Interim 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**

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