

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

&

THE HONOURABLE MR. JUSTICE R. NARAYANA PISHARADI

MONDAY, THE 10TH DAY OF JUNE 2019 / 20TH JYAISHTA, 1941

WA.No.1094 of 2019

AGAINST THE JUDGMENT IN WP(C) 402/2019 of HIGHCOURT

APPELLANT/PETITIONER:

JABBAR
VATTAPPARA PUTHANPURAYIL HOUSE,
PATTIMATTAM-P.O, PIN-683562, ERNAKULAM DISTRICT.

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

RESPONDENTS/RESPONDENTS:

- 1 STATE TAX OFFICER
WORKS CONTRACT, O/O.DEPUTY COMMISSIONER, STATE
GOODS AND SERVICES TAX DEPARTMENT, TAX COMPLEX,
MATTANCHERRY, KOCHI-682002.
- 2 COMMISSIONER OF STATE TAXES,
TAX TOWER, KARAMANA,
THIRUVANANTHAPURAM-695002.
- 3 STATE OF KERALA,
REPRESENTED BY IT'S SECRETARY TO
TAXES, SECRETARIAT, THIRUVANANTHAPURAM-695002.

SR.GP-SRI.MOHAMMED RAFIQ

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 10.06.2019,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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

W.A No. 1094 of 2019

Dated this the 10th day of June, 2019

JUDGMENT

Abdul Rehim,J

The appellant herein is challenging the judgment in WP(C) No. 402/2019, dated 21.01.2019, through which the writ petition was dismissed. The respondents herein are the respondents in the writ petition.

2. Exts.P1 and P2 orders of assessment and demand notices issued with respect to the years 2011-12 and 2012-13 were under challenge in the writ petition. One of the main grounds raised was that, the assessment proceedings was initiated beyond the time limit stipulated under Section 25(1) of the Kerala Value Added Tax Act (KVAT Act). Inter alia, the appellant challenged constitutional validity of Section 174 of the Kerala State Goods and Service Tax Act (KSGST Act) in the writ petition. The writ petition was dismissed by holding that the issue agitated stands squarely covered against the appellant, through the judgment in WP(C) No. 11335/2018 and connected cases, dated 11.01.2019.

3. Learned counsel for the appellant contended that, the Single Judge had omitted to consider the ground raised on the question of limitation. It is pointed out that the judgment in WP(C) No. 11335/2018 covers only the question of validity of Section 174. However, the learned counsel for the appellant had fairly conceded that the appellant is not intending to pursue the challenges with respect to Ext.P2 assessment finalised for the year 2012-13. It is contended that, with respect to Ext.P1 assessment with respect to the year 2011-12, the challenge on the basis of limitation question need to be looked into.

4. Fact that the judgment in WP(C) No.11335/2018 and connected cases covers only the question of validity of Section 174 of the KSGST Act, is conceded by the learned Government Pleader appearing on behalf of the respondents. It is also conceded that a large number of writ appeals filed against the said judgment are pending disposal before this Court. Under the above mentioned circumstances, we are of the considered opinion that remittance of the writ petition for a fresh consideration and disposal on the question of limitation agitated against Ext.P1 order of assessment, would serve the ends of justice.

5. Hence, the above writ appeal is hereby allowed and the

impugned judgment in WP(C) No. 402/2019 dated 21.01.2019 is hereby set aside. The writ petition is restored on to the files of this Court and remitted to the learned Single Judge dealing with the subject matter for fresh consideration and disposal on the question of validity of Ext.P1 assessment based on the challenge raised under Section 25(1) of the KVAT Act. The Registry shall post the writ petition before the learned 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, as against the collection and recovery of amounts covered under Ext.P1 order of assessment.

**Sd/-C.K.ABDUL REHIM ,
JUDGE**

**Sd/- R.NARAYANA PISHARADI,
JUDGE**