

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 03RD DAY OF JUNE 2019 / 13TH JYAISHTA, 1941

WA.No. 1149 of 2019

AGAINST THE JUDGMENT IN WP(C) 31972/2018 of THIS COURT

APPELLANT/PETITIONER:

M/S.ATLAS GOLD SUPER MARKET,  
MAVOOR ROAD, KOZHIKODE, REPRESENTED BY ITS  
MANAGING DIRECTOR SRI.AHMED ISMAIL.

BY ADVS.  
SRI.A.KUMAR  
SHRI.ABRAHAM JOB  
SMTG.MINI(1748)  
SRI.AJAY V.ANAND  
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-695001.
- 2 THE COMMISSIONER,  
STATE GOODS AND SERVICES TAX DEPARTMENT,  
THIRUVANANTHAPURAM-695001.

W.A. No.1149/2019

-:2:-

3 ASSISTANT COMMISSIONER,  
SPECIAL CIRCLE-I, STATE GOODS AND SERVICES TAX  
DEPARTMENT, KOZHIKODE-673001.

OTHER PRESENT:

SPL.GP. (TAXES) -SRI.C.E.UNNIKRISHNAN

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 03.06.2019,  
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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

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**Writ Appeal No. 1149 OF 2019**  
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*Dated this the 3<sup>rd</sup> day of June, 2019*

**J U D G M E N T**

**Abdul Rehim, J.**

The petitioner in W.P.(C) 31972/2018 is challenging the judgment dismissing the writ petition. The respondents herein are the respondents in the writ petition.

2. Exts.P4 to P8 notices proposing re-fixation of payment of compounded tax under Section 8(f) of the Kerala Value Added Tax Act(hereinafter referred to as 'the KVAT Act') were challenged in the writ petition by contending that the proceedings was initiated beyond the time limit stipulated under Section 25(1) of the KVAT Act in one of the cases and also contending that an identical proceedings with respect to the previous years are under challenge before this court and there were interim orders issued with respect to operation of the said

proceedings initiated. *Inter alia*, the appellant challenged constitutional validity of Section 174 of the Kerala State Goods and Services Tax Act(KSGST Act, for short), in the writ petition.

3. The writ petition was dismissed along with a batch of other cases by holding that, the issue involved stands covered against the petitioner by virtue of the judgment in W.P.(C) 11335/2018 and connected cases, dated 11<sup>th</sup> January, 2019.

4. Learned counsel for the appellant contended that the judgment in W.P.(C) 11335/2018 and connected cases covers only the question regarding the validity of Section 174 and that the learned Single Judge had omitted to consider the other grounds raised in the writ petition. The above fact is not disputed by the learned Special Government Pleader appearing for the respondents. It is also evident that, from the judgment in W.P.(C) 11335/2018 and connected cases, a lot of writ appeals have already been admitted by this court and the issue is now pending consideration before the Division Bench.

5. Under the above mentioned circumstances, we are

of the considered opinion that a remittance of the writ petition for consideration of the questions other than the validity of Section 174 of the KGST Act, is warranted and will serve the ends of justice. Hence we are inclined to remit the writ petition for a fresh consideration and disposal.

6. Hence the above Writ Appeal is hereby allowed and the impugned judgment of the learned Single Judge in W.P.(C) 31972/2018, dated 21<sup>st</sup> January, 2019 is hereby set aside. The writ petition is restored on to the files of this court for fresh consideration and disposal 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. The interim order which was in force as on the date of the 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.**

ul/- // True copy //

[P.S. to Judge]