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 20TH DAY OF MAY 2019 / 30TH VAISAKHA, 1941

WA.No. 1167 of 2019

AGAINST THE ORDER/JUDGMENT IN WP(C) 24608/2018 of HIGHCOURT

APPELLANT/PETITIONER:

HOTAL ROYAL RESIDENCY PARK
OTTAPALAM ROAD, THIRUVILWAMALA P.O.,
THRISSUR, KERALA 680 588, REPRESENTED BY ITS
MANAGING DIRECTOR, MR. SEJVEL.M.N.

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 SERVICES TAX DEPARTMENT,
THIRUVANANTHAPURAM 695 001.

3 **THE ASSISTANT COMMISSIONER**
**INVESTIGATION BRANCH, STATE GOODS AND SERVICES TAX DEPARTMENT, PALAKKAD , KERALA, 679 001.**

**OTHER PRESENT:**
**SR.GP-SRI.MOHAMMED RAFIQ**

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 20.05.2019, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

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

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**Writ Appeal No. 1167 OF 2019**

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*Dated this the 20th day of May, 2019*

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

***Abdul Rehim, J.***

The petitioner before the learned Single Judge is challenging dismissal of W.P.(C) 24608/2018. The respondents herein are the respondents in the writ petition.

2. Exts.P1 to P4 notices issued proposing imposition of penalty under Section 67 of the Kerala Value Added Tax Act(hereinafter referred to as 'the KVAT Act') was under challenge in the writ petition. One of the main contentions taken by the appellant is that the proceeding was initiated beyond the time limit stipulated under Section 67 of the KVAT Act. *Inter alia,* the appellant challenged the constitutional validity of Section 174 of the Kerala State Goods and Service

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 11th January, 2019.

4. Learned counsel for the appellant contended that, the learned Single Judge had omitted to consider the issue raised based on limitation, which aspect the learned Government Pleader appearing for the respondents have fairly conceded. It is also conceded that the judgment in W.P.(C) 11335/2018 and connected cases are pending in various Writ Appeals filed before this court.

5. Under the above mentioned circumstances, we are of the considered opinion that a re-consideration of the writ petition on the ground raised as mentioned above will be appropriate to achieve the ends of justice. Hence we are inclined to remit the matter to the Single Judge for

reconsideration.

6. Accordingly, the impugned judgment in W.P.(C) 24608/2018 is hereby set aside. The Registry shall post the writ petition before the learned Single Judge dealing with the subject matter, as per the roster, for consideration of the grounds raised in the writ petition, other than the issue relating to the validity of Section 174 of the KSGST Act. Needless to observe that the question regarding validity of Section 174 will depend upon the outcome of the writ appeals which are pending before this court.

7. 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/-

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P.S. to Judge.