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 09TH DAY OF APRIL 2019 / 19TH CHAITHRA, 1941

WA.No. 1053 of 2019

AGAINST THE JUDGMENT DATED 11-01-2019 IN WP(C) 19728/2018 of HIGHCOURT

APPELLANT/PETITIONER:

M/S.JOSCO JEWELLERS PVT. LTD
RAJIV GANDHI SHOPPING COMPLEX, KOTTAYAM,
REPRESENTED BY ITS GENERAL MANAGER, SRI.SABU THOMAS

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.

3 STATE TAX OFFICER (IB)-II,
STATE GOODS AND SERVICES TAX DEPARTMENT,
KOLLAM-691013.

OTHER PRESENT:

SR.GP.SRI.MOHAMMED RAFIQ

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 09.04.2019, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.K. ABDUL REHIM, J.
&
R. NARAYANA PISHARADI, J.

W.A. No. 1053 OF 2019

DATED THIS THE 9th DAY OF APRIL, 2019

J U D G M E N T

Abdul Rehim, J:

The petitioner in W.P (C) No.19728/2018 is the appellant herein, challenging the judgment dismissing the writ petition on 11-01-2019. The respondents herein are the respondents in the writ petition.

2. Exhibit P2 notice and Ext.P4 order imposing penalty were challenged in the writ petition by contending that the appellant company is in no way liable to be imposed with penalty, because the irregularities pointed out is with respect to the transactions conducted by another concern, which is functioning in another name and style. Inter alia, the appellant raised contentions regarding the constitutional validity of Section 174 of the Kerala State Goods and Services Tax Act (KSGST Act for short). The writ petition was dismissed along with a batch of other cases by holding that the issue involved stands covered against the petitioner through the judgment W.P (C) No.11335/2018 and connected cases, dated 11-01-2019.

3. Contention of the appellant is that the issue covered under the judgment in W.P (C) No.11335/2018 and connected cases pertains only with respect to validity of Section 174 of the KSGST Act. It is pointed out that the learned Judge had failed to advert to other contentions taken by the appellant and to decide the same on merit. The fact that the learned Single Judge has not considered any grounds other than the validity of Section 174 of the KSGST Act, is conceded by the learned Government Pleader. It is also conceded that the decision in W.P (C) No.11335/2018 and connected cases is now pending consideration in various writ appeals filed before this court. Therefore we are of the considered opinion that a remittance of the writ petition for fresh consideration and disposal on the basis of the grounds mentioned as above, will suffice to meet the ends of justice.

4. Hence, the above writ appeal is hereby allowed. The impugned judgment in W.P (C) No.19728/2018 is hereby set aside. The writ petition is restored on the files of this court for fresh consideration and disposal by the Single Judge on the ground other than the challenge against validity of Section 174 of the KSGST Act.

5. The Registry shall post the writ petition before the learned Single Judge, dealing with the subject matter as per the roster.

6. Interim order of stay 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

AMG