IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM &

THE HONOURABLE MR. JUSTICE R. NARAYANA PISHARADI

WEDNESDAY,THE 06TH DAY OF MARCH 2019/15TH PHALGUNA, 1940

WA.No. 740 of 2019

AGAINST THE JUDGMENT IN WP(C) 27023/2018 of HIGH COURT

APPELLANT/PETITIONER:

M/S SANGEETHA JEWELLERY
ADIMALI, IDUKKI,
REPRESENTED BY ITS MANAGING PARTNER M.A. JOSE.

BY ADVS.
SRI.AJI V.DEV
SMT.O.A.NURIYA
SRI.ALAN PRIYADARSHI DEV

RESPONDENTS/RESPONDENTS:

1 THE STATE TAX OFFICER, S.G.S.T. DEPARTMENT
ADIMALI. IDUKKI 685561.

2 THE STATE OF KERALA
REPRESENTED BY ITS SECRETARY TO TAXES,
SECRETARIAL, THIRUVANANTHAPURAM 695 001.

3 THE CENTRAL BOARD OF INDIRECT TAXES
AND CUSTOMS, REPRESENTED BY ITS CHAIRMAN,
DEPARTMENT OF REVENUE, NORTH BLOCK,
NEW DELHI 110 001.

4 THE UNION OF INDIA, REPRESENTED BY ITS
PRINCIPAL SECRETARY, MINISTRY OF FINANCE,
DEPARTMENT OF REVENUE, NORTH BLOCK, NEW DELHI
110 001.

OTHER PRESENT:

SRI. V K SHAMSUDEEN SR GP.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 06.03.2019, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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

Writ Appeal No. 740 OF 2019

Dated this the 6th day of March, 2019

JUDGMENT

Abdul Rehim, J.

Petitioner in W.P.(C) No.27023/2018 is challenging the judgment of the Single Bench dated 12th February, 2019.

2. Ext.P1 notice of pre-assessment was under challenge in the writ petition, mainly raising contentions with respect to constitutional validity of Section 174 of the Kerala State Goods and Services Tax Act, 2017('KSGST Act', for short). *Inter alia,* there was challenge contending that Ext.P3 order of assessment proposed is unsustainable because it was issued beyond the period of limitation stipulated under Section 19 of the 101th Amendment of the Constitution as well as the same is barred under provisions of the KVAT Act 2003.

3. The learned Judge had dismissed the writ petition relying on a common judgment passed by this court in M/s Sheen Golden Jewels(India) Pvt. Ltd. v. The State Tax Officer(IB)-I.

4. In this writ appeal it is mainly contended that the dismissal of the writ petition is erroneous on the ground that the judgment in M/s Sheen Golden Jewels(India) Pvt. Ltd.(*supra*) covers only the question regarding constitutional validity of Section 174 of the KSGST Act and the learned Judge had failed to consider the other challenges based on the ground of limitation.

5. On a perusal of the writ petition we are convinced that the petitioner had also raised various other grounds based on the question of limitation. Therefore it is evident that the writ petition was disposed of without considering those contentions on merits. Therefore we think it only appropriate to have a remand of the matter to the Single Bench for considering those

grounds.

6. Hence the above writ appeal is hereby allowed. The impugned judgment in W.P.(C) No.27023/2018, dated 12th February, 2019 is hereby set aside. The writ petition is restored on to the file of this court.

7. It is made clear that the remand will be limited specifically with respect to the contentions on the question of limitation made against the assessment.

Needless to observe that interim stay if any granted in the writ petition, which was in force till its disposal, will stand revived.

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

Sd/- R. NARAYANA PISHARADI, JUDGE.

ul/-

[True copy]

P.S. to Judge.