IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

FRIDAY ,THE 01ST DAY OF MARCH 2019 / 10TH PHALGUNA, 1940

WP(C).No. 6385 of 2019

PETITIONER/S:

M/S. TECPRO INFRA PROJECTS LTD.
(FORMERLY KNOWN AS BESL INFRA PROJECTS LTD)
CRAN-91, PONEKKARA ROAD, EDAPPALLY
KOCHI -682024, ERNAKULAM DISTRICT

BY ADV. SRI.BEJOY CHERIYAN

RESPONDENT/S:

1 STATE TAX OFFICER
STATE GST DEPARTMENT OF KERALA
SQUAD NO.VI AT ERNAKULAM
MINI CIVIL STATION, ALUVA - 683 101

2 THE COMMISSIONER, STATE GOODS AND SERVICES
TAX DEPARTMENT, TAX TOWER, KARAMANA P.O.
THIRUVANANTHAPURAM - 695022

3 STATE OF KERALA, REPRESENTED BY
SECRETARY TO GOVERNMENT, TAXES DEPARTMENT
SECRETARIAT, THIRUVANANTHAPURAM - 695 001

4 CENTRAL BOARD OF EXCISE & CUSTOMS
DEPARTMENT OF REVENUE, MINISTRY OF FINANCE
GOVERNMENT OF INDIA, NEW DELHI - 110001

GP DR. THUSHARA JAMES.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 01.03.2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

In this writ petition the petitioner has approached this Court with the following reliefs:

> *"i) To call for records leading to issuance of Ext.P1 notice issued U/s.67(1) of the KVAT Act by 1st respondent for the year 2015-16 and to issue Writ of Certiorari quashing Ext.P1 notice as the same is passed beyond the period stipulated under Sec. 19 of the Constitution One Hundred and First Amendment Act.*
>
> *i) To declare that clauses [d] and [e] of section 174 of the Kerala Goods and Services Tax Act 2017 are inconsistent and contradictory with the provisions of Sec.19 of the Constitution One Hundred and First Amendment Act 2016 and hence they are ultravires to the Constitution of India.*
>
> *iii) To declare that the powers under erstwhile Entry 54 do not exist post 15/09/2017 and therefore the provisions of the Kerala Value Added Tax Act cannot be enforced after 15/09/2017 so long as the old Entry 54 has not been saved.*
>
> *iv) To declare that when the provisions of Constitution are inconsistent with the provisions of a statute, the provisions of Constitution will prevail over the provisions of statute and so provisions of Sec.174 of the Kerala Goods and Service Tax Act 2017 to the extent to which they are in conflict with the provisions of Constitution, are bad in law.*
>
> *v) To declare that as Sec.19 of the Constitution Amendment Act is having supremacy over the rest of Sections of Constitution*

Amendment Act, the provisions passed under Sec.174 invoking Article 246A of the Constitution of India is subservient to Sec.19 of the Constitution Amendment Act and so any provision in Sec.174 which are contradictory to Sec.19 is unconstitutional.

vi) To pass interim order similar to Ext P2 and to tag this writ petition along with WP(c)No.11335 of 2018 for hearing."

2. The learned counsel agree that the issue stands squarely covered against the petitioner by judgment dated 11th January 2019 in W.P.(C) No.11335 of 2018 and connected cases.

I, therefore, dismiss the writ petition applying the ratio of the judgment referred to above.

Sd/-

DAMA SESHADRI NAIDU
JUDGE

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APPENDIX

PETITIONER'S/S EXHIBITS:

EXHIBIT P1	A TRUE COPY OF NOTICE ISSUED UNDER SECTION 67(1) OFF KVAT ACT DATED 31.12.2018 ISSUED TO THE PETITIONER BY THE 1ST RESPONDENT.
EXHIBIT P2	A TRUE COPY OF INTERIM ORDER DATED 04.04.2018 PASSED BY THIS hON'BLE COURT IN WRIT PETITION(C) NO.11335/2018 IN STAYING FURTHER STEPS, ON THE FOOTING OF NOT HAVING LEGISLATIVE COMPLIANCE TO 1ST RESPONDENT AS ON THE DATE OF INITIATING PROCEEDINGS UNDER KVAT ACT 2003.

sd