IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

TUESDAY ,THE 12TH DAY OF FEBRUARY 2019 / 23RD MAGHA, 1940

WP(C).No. 27023 of 2018

PETITIONER:

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

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

RESPONDENTS:

1 THE STATE TAX OFFICER
S.G.S.T. DEPARTMENT, ADIMALI, IDUKKI - 685 561.

2 THE STATE OF KERALA
REPRESENTED BY ITS SECRETARY TO TAXES, SECRETARIAT,THIRUVANANTHAPURAM - 695001.

3 THE CENTRAL BOARD OF INDIRECT TAXES CUSTOMS
REPRESENTED BY ITS CHAIRMAN, DEPARTMENT OF REVENUE,NORTH BLOCK, NEW DELHI-110001.

4 THE UNION OF INDIA
REPRESENTED BY ITS PRINCIPAL SECRETARY,MINISTRY OF FINANCE, DEPARTMENT OF REVENUE,NORTH BLOCK, NEW DELHI - 110001.

BY ADVS.
SMT.SHEELA DEVI.I., SC, CENTRAL BOARD OF EXCISE AND CUSTOMS
SMT.SHEELA DEVI.I. SC CENTRAL BOARD OF EXCISE AND CUSTOMS

OTHER PRESENT:

GP. SMT. M.M. JASMINE.,
SC SRI SREELAL WARRIER.
ASGI SRI P.VIJAYAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12.02.2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner, a partnership firm, has sought the following reliefs:

> i. To call for the records leading to Ext.P1 pre-assessment notice and to issue writ of certiorari quashing the same as they are issued beyond the period stipulated under Section 19 of the Constitution One Hundred and First Amendment Act as well as barred by limitation under Section 25 of the KVAT Act, 2003.
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> ii. To issue a writ of mandamus or any other appropriate writ, direction to stay any further steps pursuant to Ext.P1 pre-assessment notice.
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> iii. 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 Section 19 of the Constitution One Hundred and First Amendment Act, 2016 and hence they are ultravires to the Constitution of India.
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> iv. 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.
>
> v. 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 Section 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.

vi. To declare that as section 19 of the Constitution Amendment Act is having supremacy over the rest of sections of Constitution Amendment Act, the provisions passed under section 174 invoking Article 246A of the Constitution of India is subservient to section 19 of the Constitution Amendment Act and so any provision in section 174 which are contradictory to section 19 is unconstitutional.

vii. To pass such other order or direction as this Hon'ble Court may deem fit in the circumstances of the case.

In the light of the judgment in M/s. Sheen Golden Jewels (India) Pvt. Ltd. V The State Tax Officer (IB)-1[1] this writ petition is dismissed.

Sd/-

DAMA SESHADRI NAIDU

JUDGE

Css/

1 Judgment dated 11.01.2019 in WP(C) No.11335 of 2018 & conn.cases

APPENDIX

PETITIONER'S/S EXHIBITS:

EXHIBIT-P1:	**A TRUE COPY OF THE PRE-ASSESSMENT NOTICE ISSUED U/S.25 A OF THE KVAT ACT FOR YEARS 2009-10, 2010-11 AND 2011-12 DATED 20.07.2018.**
EXHIIT-P2:	**A TRUE COPY OF THE JUDGMENT IN STATE OF PUNJAB & OTEHRS VS.BHATINDA DISTRICT CO OP.MILK P UNION LTD REPORTED IN [2007] 10 VST 180 SC.**