IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

WEDNESDAY,THE 13TH DAY OF FEBRUARY 2019 / 24TH MAGHA, 1940

WP(C).No. 656 of 2019

PETITIONER:

M/S. CHERIAN VARKEY CONSTRUCTION CO(P) LTD.
5TH FLOOR, ALPHA PLAZA, K.P.VALLON ROAD, KADAVANTHRA,
REPRESENTED BY ITS DIRECTOR, SRI.SAJI V.CHERIAN.

BY ADVS.
SRI.A.KUMAR
JOB ABRAHAM
SMTG.MINI(1748)
SRI.AJAY V.ANAND
SRI.P.J.ANILKUMAR
SRI.P.S.SREE PRASAD

RESPONDENTS:

1 **STATE OF KERALA**
REPRESENTED BY THE CHIEF SECRETARY, GOVERNMENT OF KERALA, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001.

2 **ASSISTANT COMMISSIONER (WORKS CONTRACT)**
OFFICE OF THE DEPUTY COMMISSIONER,
STATE GOODS AND SERVICES TAX DEPARTMENT,
ERNAKULAM - 682 016.

OTHER PRESENT:

GP SMT. M.M. JASMINE.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13.02.2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner, a private limited company, has sought the following reliefs:

> "For these and other grounds to be urged at the time of hearing, it is humbly prayed that this Hon'ble Court may be pleased to call for the relevant records relating to Exts.P3 and P4 assessment orders issued by the 2nd respondent under Section 25(1) of the Kerala Value Added Tax Act 2003, and,
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> A. Declare that clauses (a), (b), (c), (d) and (e) of Sub Section 2 of Section 174 of the Kerala State Goods and Services Act, 2017 (Act 20 of 2017) is illegal and ultra vires Article 246A of the Constitution of India, Section 19 of the Constitution (One Hundred and First Amendment) Act, 2016 and the Kerala State Goods and services Act, 201 7 (Act 20 of 2017) and is accordingly to be rendered void and un-enforceable.
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> B. Declare that sub section 3 of section 174 of the Kerala State goods and Services Act 2017 (Act 20 of 2017) in so far as it provides for application of Section 4 of the Interpretation and General Clauses Act 1125 (Act VII of 1125) providing for saving of the Kerala Value Added tax Act, 2003 and with regard to the effect of the repeal of the statutes specified in Section 174(1) (I) is illegal, ultra vires Article 246A of the Constitution of India and Section 19 of the Constitution (One Hundred and First Amendment) Act, 2016 and also beyond the scope and scheme of the Kerala State Goods and Services Act, 2017 (Act 20 of 2017)

and is therefore to be rendered void and un-enforceable.

C. Declare that the authorities under the Taxes Department of the State of Kerala have no jurisdiction or powers to levy, assess and collect tax under the Kerala Value Added tax Act, 2003 (Act 30 of 2004) enacted under Entry 54 of the State list of the 7th Schedule to the Constitution as it stood prior to substitution on 16.9.2016 by the Constitution (One Hundred and First Amendment) Act, 2016 and/or also consequent to the introduction of the Kerala State Goods and Services Act, 2017 (Act 20 of 2017).

D. Declare that the amendment as per the Kerala Finance Act, 2018 (Act V of 2018 dated 31.3.2018) vide sub clause 4 of section 10 therein to the third proviso to sub section (1) of section 25, by substituting the words and figures "31st March 2018" with the words and figures "31st March, 2019" is void, unconstitutional and without authority of law and is unenforceable.

E. Issue a Writ of Certiorari, or such other appropriate Writ, Order or direction, quashing Exts.P3 and P4 assessment orders.

F. Issue a Writ of Prohibition, or such other appropriate Writ, Order or direction, restraining the respondent Sate of Kerala and the Taxation authorities under the first and second respondents from initiating any proceedings for collection of tax including realization of any amounts under Exts.P3 and P4 assessment orders under the Kerala Value Added Tax Act, 2003 in relation to the assessment years covered by Exts.P3 and P4 assessment orders.

Pass such other appropriate writ, order or direction as this Hon'ble court may deem just and 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

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1	**TRUE COPY OF NOTICE DATED 15/11/2018 FOR THE ASSESSMENT YEAR 2011-12.**
EXHIBIT P2	**TRUE COPY OF NOTICE DATED 15/11/2018 FOR THE ASSESSMENT YEAR 2012-13.**
EXHIBIT P3	**TRUE COPY OF THE ASSESSMENT ORDER DATED 10/12/2018 FOR THE ASSESSMENT YEAR 2011-12.**
EXHIBIT P4	**TRUE COPY OF THE ASSESSMENT ORDER DATED 10/12/2018 FOR THE ASSESSMENT YEAR 2012-13.**
EXHIBIT P5	**TRUE COPY OF THE REPLY FOR THE ASSESSMENT YEAR 2011-12.**

Css/

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