IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

WEDNESDAY, THE 15TH DAY OF JULY 2015/24TH ASHADHA, 1937

WP(C).No. 3822 of 2012 (C)

PETITIONER(S):

ASHRAF T.M., N.A. ENTERPRISES,
PEZHAKAPPILLY, MUVATTUPUZHA-686 661.

BY ADV. SRI.P.N.DAMODARAN NAMBOODIRI.

RESPONDENT(S):

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1. THE COMMERCIAL TAX OFFICER,
   COMMERCIAL TAXES, MUVATTUPUZHA-686 661.

2. THE INSPECTING ASST. COMMISSIONER,
   DEPARTMENT OF COMMERCIAL TAXES,
   MUVATTUPUZHA-686 661.

BY SR. GOVT. PLEADER SRI.R. RANJITH.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15-07-2015, ALONG WITH WP(C).NO.4864 OF 2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rs.

WP(C).No. 3822 of 2012 (C)

APPENDIX

PETITIONER'S EXHIBITS:-

EXT.P1 COPY OF THE ORIGINAL ASSESSMENT ORDER NO.23153618/2004-05 DATED 02/06/2006 FOR THE YEAR 2004-05 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.

EXT.P2 COPY OF THE REVISED ASSESSMENT ORDER NO.23153618/2004-05 DATED 31/10/2006 (SHOWN IN THE ASSESSMENT ORDER DATED 31/10/2005) FOR THE YEAR 2004-2005 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.

EXT.P3 COPY OF THE NOTIE U/S. 19, NO.23153618/2004-05 DATED 27/10/2011, FOR THE YEAR 2004-05 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.

EXT.P4 COPY OF THE JUDGMENT CARAVONE ICE CREAD PARLOR VS.STATE OF KERALA (2001)9 KTR 90.

EXT.P5 COPY OF THE JUDGMENT T.D. DAVIS VS. STATE OF KERALA (1998)6 KTR 23.

EXT.P6 COPY OF THE REPLY DATED 08/12/2011 FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.

EXT.P7 COPY OF THE JUDGMENT NO.WA.1881/2011 DATED 12/12/2011.

EXT.P8 COPY OF THE ASSESSMENT ORDER NO.23153618/2004-05 DATED 20/01/2012 FOR THE YEAR 2004-05 ISSUED BY THE 1ST RESPONDENT.

EXT.P9 COPY OF THE PENALTY ORDER ISSUED BY THE INTELLIGENCE OFFICER, MATTANCHERY TO THE PETITIONER HEARING NO.ISM 64/06-07 (04-05) DATED 17/01/2011.

EXT.P10 COPY OF THE APPELLATE ORDER T.A. NO.3/2012, DATED 30/11/2012 ISSUED BY THE APPELLANT TRIBUNAL, ADDITIONAL BENCH, ERNAKULAM TO THE PETITIONER.

EXT.P11 COPY OF THE NOTICE NO.ISM II/64/06-07 (04-05) DATED 08/03/2013 ISSUED BY THE INTELLIGENCE OFFICER, MATTANCHERY TO THE PETITIONER.

EXT.P12 COPY OF THE REPLY DATED 20/03/2013, SUBMITTED BY THE PETITIONER TO THE INTELLIGENCE OFFICER, MATTANCHERY.

EXT.P13 COPY OF THE NOTICE NO.ISM II/64/06-07 DATED 06/04/2013, ISSUED BY INTELLIGENCE OFFICER, MATTANCHERY TO THE PETITIONER.

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WP(C).No. 3822 of 2012 (C)

EXT.P14	COPY OF THE LETTER DATED 19/04/2013, SUBMITTED BY THE COUNSEL OF THE PETITIONER.
EXT.P15	COPY OF THE NOTICE NO.ISM II/64/06-07 (04-05) DATED 19/08/2013 ISSUED BY THE INTELLIGENCE OFFICER TO THE PETITIONER.
EXT.P16	COPY OF THE STATEMENT ISSUED BY THE INTELLIGENCE OFFICER, MATTANCHERY, TO THE PETITIONER.
EXT.P17	COPY OF THE REPLY DATED 27/08/2013, SUBMITTED BY THE COUNSEL OF THE PETITIONER TO THE INTELLIGENCE OFFICER, MATTANCHERY.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.A. TO JUDGE

rs.

A.MUHAMED MUSTAQUE, J.

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W.P.(C) Nos.3822/2012 & 4864/2013

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Dated this the 15th day of July, 2015

JUDGMENT

These writ petitions are filed by the assessees under the Kerala General Sales Tax Act (for short, the "KGST Act"), challenging the assessment orders under Section 19 of the KGST Act. The common issue in both writ petitions is relating to limitation.

2. In W.P.(C) 3822/2012, the assessment is in respect of the year 2004-2005. The original assessment was completed on 2.6.2006 and thereafter, a revised assessment order was passed on 31.10.2006.

3. The proceedings have been reopened in terms of Section 19 of the KGST Act by issuing notice dated 27.10.2011. The assessment was completed on 20.1.2012. The petitioner's case is that the assessment under Section 19 is barred by limitation beyond the period of five years as prescribed under Section 19 of the KGST Act.

4. In W.P.(C) No.4864/2013, the assessment is for the year 2001-2002. The original assessment was completed on 11.7.2003. It was appealed and modified assessment order was passed on 07.10.2006. The petitioner received a notice under Section 19 of the KGST Act on 17.1.2012. Thereafter, the petitioner replied. The petitioner again received the notice on 03.01.2013. The petitioner raised objection. However, overruling the objection, the assessment has been completed on 2.2.2013. This order is under challenge.

5. The learned counsel for the petitioners submits that the assessment in both cases is out of time as the same was not initiated or completed within five years from the expiry of the year to which tax relates. There is no dispute much to the controversy for reckoning five years. The only issue raised in the counter is based on the Kerala Finance Act, 2011 by amending Section 17 of the KGST Act. By the above amendment, all pending matters for assessment has been extended to be completed on or before 31.3.2012. Therefore, it is contended by virtue of the amendment under Section 17 of the KGST Act, the Authority has power to

complete the assessment in terms of Section 19 of the KGST Act.

6. It is to be noted that under Sections 17 and 19 of the KGST Act operate in a different domain. Section 17 of the KGST Act relates to the assessment. Section 19 of the KGST Act relates to the assessment of escaped turnover. In Section 19 of the KGST Act, specifically five years time is provided. Unless and until that five years is altered or amended by statutory provision, that cannot be taken away by an amendment to Section 17 of the KGST Act. Section 19 of the KGST Act being an independent provision, necessarily, the limitation has to be reckoned in terms of Section 19 of the KGST Act itself and not with reference to Section 19 of the KGST Act. In view of the fact that there is no corresponding amendment to Section 19 of the KGST Act, the assessment in terms of Section 17 of the KGST Act is barred by limitation.

Accordingly, the writ petitions are allowed and the impugned orders are set aside.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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