IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN

WEDNESDAY, THE 23RD DAY OF AUGUST 2023 / 1ST BHADRA, 1945

WP(C) NO. 26289 OF 2014

PETITIONER/S:

M/S. V.M.TRADERS, PULLUPALAM ROAD, KUNNUMPURAM, KOCHI - 682 001, REPRESENTED BY ITS PARTNER, V.M.SAMAD.

BY ADVS.SRI.HARISANKAR V. MENONSMT.MEERA V.MENONSRI.MAHESH V.MENON

RESPONDENT/S:

1 COMMERCIAL TAX OFFICER, FIRST CIRCLE, MATTANCHERRY - 682 002.

2 COMMISSIONER OF COMMERCIAL TAXES, TAX TOWERS, KILLIPALAM, THIRUVANANTHAPURAM - 695 001.

SENIOR GP – SMT.V.K.SHAMSUDHEEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 23.08.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The writ petition is filed seeking to quash Ext.P5 assessment order passed by the first respondent for the assessment year 2008-09.

2. Heard the learned counsel for the petitioner and the learned Government Pleader.

3. On a perusal of Ext.P5 assessment order, it is seen that the assessment year is 2008-09, in respect of which, Ext.P1 notice under Section 25(1) of the Kerala Value Added Tax Act, 2003 (for short, "the Act") was issued on 30.04.2014, i.e., after five years from the last date of the period, to which the return relates.

4. In **Commercial Tax Officer, Anchal and others** v. **S.Najeem and another** [2018(4)KHC 666(DB)], a Division Bench of this Court has held that the period of limitation to determine tax payable is five years as per Section 25(1) of the Act. In the case in hand, Ext.P1 notice under Section 25(1) of the Act were issued on

30.04.2014, i.e., after five years from the last date of the period, to which the assessment relates, i.e., after five years from 31.03.2009, which is perfectly out of time.

5. At this juncture, the learned Government Pleader submits that the State has filed Civil Appeal No.4307 of 2022 before the apex court, challenging the judgment in **S.Najeem** *(supra)*, which has been dismissed.

6. On a consideration of the facts and circumstances, I am of the opinion that following the judgment in **S.Najeem** *(supra)*, the writ petition can be allowed.

Accordingly, following the judgment in **S.Najeem** *(supra)*, the writ petition is allowed and Ext.P5 order is set aside.

Sd/-

SHOBA ANNAMMA EAPEN

JUDGE

bka/-

APPENDIX OF WP(C) 26289/2014

PETITIONER EXHIBITS

P1 - COPY OF NOTICE ISSUED BY THE 1ST RESPONDENT.

P2 - COPY OF LETTER SUBMITTED BY THE PETITIONER BEFORE THE CHECK POST AUTHORITY.

P3 - COPY OF NOTICE IN FORM NO. 17A ISSUED BY THE COMMERCIAL TAX INSPECTOR, CHECK POST, WALAYAR.

P4 - COPY OF REPLY FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.

P5 - COPY OF ASSESSMENT ORDER ISSUED BY THE 1ST RESPONDENT.