IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN

WEDNESDAY, THE 13TH DAY OF DECEMBER 2023 / 22ND AGRAHAYANA, 1945

WP(C) NO. 39796 OF 2015

PETITIONER:

FRANCIS JACOB
AGED 58 YEARS
PROPRIETOR, MANAYATHUMARIYIL HARDWARES, PINGOTTOOR PO,
ERNAKULAM DISTRICT, PIN-686 671.

BY ADVS.
SRI.M.G.SHAJI
AJI V DEV
ALAN PRIYADARSHI DEV(K/000617/2017)
S.SAJEEVAN(K/835/1998)
JOSEPH P.S.(K/002430/2022)

RESPONDENTS:

1 THE COMMERCIAL TAX OFFICER
AGED 58 YEARS
KOTHAMANGALAM, ERNAKULAM DISTRICT, PIN-686 691.

2 THE STATE OF KERALA
REPRESENTED BY THE SECRETARY, TAXES DEPARTMENT,
GOVERNMENT SECRETARIAT, TRIVANDRUM, PIN-695 001.

OTHER PRESENT:

SRI. ARUN AJAY SHANKAR-GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 13.12.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The writ petition is filed seeking to quash Ext.P1 assessment orders passed by the first respondent for the assessment year, 2009-10.

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

3. On a perusal of Exts.P1 assessment order, it is seen that the assessment year is 2009-10, in respect of which, notice under Section 25(1) of the Kerala Value Added Tax Act, 2003 (for short, "the Act") was issued on 3.9.2015 after five years from the last date of the period, to which the return relates.

4. In <u>Commercial Tax Officer, Anchal and others</u> v. <u>S.Najeem and another</u> [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, notice under Section 25(1) of the Act was issued on 3.9.2015, i.e., after five years from the last date of

the period, to which the assessment relates, 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.P1 assessment order is set aside.

Sd/-

SHOBA ANNAMMA EAPEN
JUDGE

MBS/

APPENDIX OF WP(C) 39796/2015

PETITIONER EXHIBITS

P1 : THE TRUE COPY OF THE ORDER DT 30-9-2015 PASSED BY THE 1ST RESPONDENT ASSESSING THE PETITIONER FOR THE YEAR 2009-2010 UNDER SECTION 25(1) OF THE KERALA VALUE ADDED TAX ACT, 2003.