IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN

FRIDAY, THE 26TH DAY OF JULY 2024 / 4TH SRAVANA, 1946

WP(C) NO. 3155 OF 2017

PETITIONER/S:

NATIONAL COLLATERAL MANAGEMENT SERVICES LIMITED
HOUSE NO.188, 1, IST FLOOR, NEAR SEMINARIPPADY BUS STOP, NH 47, THOPPUKADAVU BYE LANE, PERIYAR GARDENS, THOTTAKKATTUKARA P O, ALUVA, ERNAKLUAM DISTRICT, PIN-683108, REPRESENTED BY SRI.SATHISH FRANCIS , AREA MANAGER.

BY ADVS.
SRI.E.P.GOVINDAN
SMT.G.DEEPA

RESPONDENT/S:

1. THE COMMERCIAL TAX OFFICER (SPECIAL TEAM)
OFFICE OF THE DEPUTY COMMISSIONER, COMMERCIAL TAXES, COMMERCIAL TAX COMPLEX, BAZAR ROAD, MATTANCHERRY, PIN-682002.

2. THE ASSISTANT COMMISSIONERASSESSMENT
SPECIAL CIRCLE, MATTANCHERRY AT MINI CIVIL STATION, ALUVA, PIN-683101.

3. THE COMMISSIONER OF COMMERCIAL TAXES
KERALA, PUBLIC BUILDING, VIKAS BHAVAN P O, THIRUVANANTHAPURAM, PIN-685001.

4. THE STATE OF KERALA, REPRESENTED BY THE SECRETARY, TAXES DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN-695001.

BY SRI. SAYED. M. THANGAL -SPL. GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 26.07.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The writ petition is filed seeking to quash Ext.P1 revised assessment order passed by the first respondent for the assessment year, 2010-11.

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

3. On a perusal of Ext.P1, it is seen that the assessment year is 2010-11, in respect of which, notice under Section 25(1) of the Kerala Value Added Tax Act, 2003 (for short, "the Act") was issued on 17.09.2016, 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 on hand, notice under Section 25(1) of the Act was issued on 17.09.2016, i.e., after five years from the last

date of the period, to which the assessment relates, which is perfectly out of time.

5. The learned Special 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. It is further submitted that in the case on hand, the time for completion of assessment was extended by the Deputy Commissioner as per Section 25B of the Act.

6. However, even the extension of time by the Deputy Commissioner under Section 25B of the Act also is decided against the Department by a Full Bench of this Court in **Cholayil Private Limited** v. **Assistant Commissioner (Assessment)** [2015 (4) KLT 516 (FB)], stating that even if Section 25B is to guide the Deputy Commissioner, the time limit has to be reasonable because, there cannot be an indefinite proceeding under Section 25(1) in view of the third proviso to that section. Therefore, on a consideration of the facts and circumstances, I am of the opinion that following the judgments in **S.Najeem** *(supra)* and **Cholayil Private Ltd.**

(*supra*), the writ petition can be allowed.

Accordingly, following the judgments cited *supra,* the writ petition is allowed and Ext.P1 order is set aside.

Sd/-

SHOBA ANNAMMA EAPEN

JUDGE

bka/-

APPENDIX OF WP(C) 3155/2017

PETITIONER EXHIBITS

EXHIBIT P1	**TRUE COPY OF THE REVISED ASSESSMENT ORDER DTD 20/12/2016 FOR THE YEARS 2010-11 PASSED BY THE FIRST RESPONDENT**
EXHIBIT P2	**TRUE COPY OF CIRCULAR NO 16/07 DTD 2/4/2007 ISSUED BY THE 3RD RESPONDENT**
EXHIBIT P3	**TRUE COPY OF ANNUAL RETURN DTD 30/9/2011 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.**
EXHIBIT P4	**TRUE COPY OF AUDIT REPORT FOR THE YEARS 2010-11 OF THE PETITIONER COMPANY**