IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

&

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

TUESDAY, THE 7TH DAY OF MAY 2024 / 17TH VAISAKHA, 1946

WA NO. 608 OF 2024

AGAINST THE JUDGMENT DATED 01.04.2024 IN WP(C) NO.10949/2024 OF HIGH COURT OF KERALA

APPELLANT/PETITIONER IN WP(C):

M/S.M J GOLD,
T C NO. X/1095, COPPEN LANE, NEAR NEW CHURCH ROAD,
THRISSUR, REPRESENTED BY ITS MANAGING PARTNER,
SRI. M K ANTOCHAN, PIN – 680 001.

BY ADV TOMSON T.EMMANUEL

RESPONDENTS/RESPONDENT IN WP(C):

1 STATE TAX OFFICER,
TAX PAYER SERVICES CIRCLE, THRISSUR CITY,
STATE GST COMPLEX, POOTHOLE, THRISSUR, PIN – 680 004.

2 CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS,
MINISTRY OF FINANCE, DEPARTMENT OF REVENUE, NEW DELHI,
REPRESENTED BY ITS UNDER SECRETARY, PIN – 110 023.

3 STATE OF KERALA,
REPRESENTED BY ITS SECRETARY, DEPARTMENT OF TAXES,
SECRETARIAT, THIRUVANANTHAPURAM, PIN – 695 001.

4 COMMISSIONER OF STATE TAX,
STATE GOODS AND SERVICE TAX DEPARTMENT, 9TH FLOOR, TAX TOWER, KILLIPALAM, KARAMANA P O; THIRUVANANTHAPURAM, PIN – 695 022.

BY ADVS
SRI.SREELAL N WARRIER, SC
SMT.ANIMA M, GP

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 07.05.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

GOPINATH P. & SYAM KUMAR V.M., JJ.
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W. A. No.608 of 2024
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Dated this the 07th day of May, 2024

JUDGMENT

GOPINATH P, J.

The appellant filed a writ petition challenging the order annexed as Ext.P5 to the writ petition. A learned Single Judge of this Court by judgment dated 01.04.2024, dismissed the writ petition for reasons recorded in the judgment. It was specifically found that the appellant had failed to avail of the opportunities before the original authority and therefore no ground was made out for interference under Article 226 of the Constitution of India.

2. The learned counsel appearing for the appellant would submit that Ext.P5 is dated 21.11.2023 and the writ petition was filed challenging the said order on 15.03.2024. It is submitted that while declining jurisdiction under Article 226 of the Constitution of India, the learned Single Judge ought to have at least protected the right of the appellant to file a statutory appeal against Ext.P5 order as the writ petition was filed within the

condonable period for filing an appeal under Section 107 of the CGST / SGST Acts. It is submitted that the certified copy of the judgment in W.P(C)No.10949 of 2024, out of which this writ appeal arises, was received by the appellant on 18.04.2024 and immediately thereafter the writ appeal was also filed.

2. Heard the learned Government Pleader also.

3. Having heard the learned counsel for the appellant and the learned Government Pleader and having regard to the limited nature of relief now sought for by the appellant, we are of the opinion that the appellant can be permitted to avail the statutory remedy taking into consideration the fact that the writ petition was filed challenging Ext.P5 order within the condonable period for filing an appeal. We therefore dispose of this writ appeal by directing that if the appellant were to file an appeal against Ext.P5 order on or before 15.05.2024, the period from 15.03.2024 till 15.05.2024 shall be excluded for the purpose of determining the period within which such appeal had to be filed. It is also made clear that if such appeal is filed before the Appellate Authority as aforesaid, the Appellate Authority shall dispose of the appeal untrammelled by any observation

contained in the judgment of the learned Single Judge. We make it clear that we have not expressed any opinion on the merits of the matter.

Sd/-
GOPINATH P.
JUDGE

Sd/-
SYAM KUMAR V.M.
JUDGE

DK