

GIB/KR/JILMON JOHN/20-03-2019/HC-90**High Court Category :** Rate**State :** Kerala**Order No.:** GIB/KR/JILMON JOHN/20-03-2019/HC-90**Name of Entry :**

Jilmon John Vs. State of Kerela

Date : 20-03-2019**Breif Issue :****Facts & Issue of the case**

This writ petition is filed by the petitioner Jilmon John, Government Contractor, seeking to quash Exts .P2, P5, P8 and P10 and pass orders on Ext.P12 for release and refund of EMD of INR.2,00,000 /- furnished by the petitioner along with the tender submitted on 3.6.2017 and to re-notify the tender for the work incorporating GST to afford an opportunity to petitioner to participate in it and for other consequential reliefs.

In response to e-tender notice issued by the respondent for “Improvements to Thodupuzha Pappootty Hall Vellangallor Road”, petitioner submitted a tender taking into account the rate of works tax at the rate of 4% stipulated in section 8 of the Kerala Value Added Tax Act, 2003 (VAT) as per the special conditions contained in the notice inviting tender. The respondent accepted the tender submitted by the petitioner with a probable amount of contract and directing him to execute an agreement for carrying out the works. According to the petitioner, by the introduction of the CGST Act, 2017, GST was imposing at 18% on the value of works. The Petitioner contended that they submitted representations requesting either to reimburse the additional tax imposed at 14% over the 4% specified in the notice inviting tender or cancel the notice and release and refund the EMD of Rs.2,00,000/-furnished by him.

The respondent sent a letter to the petitioner without considering the request either to reimburse differential tax imposed by the GST or to release the EMD of Rs.2,00,000/- furnished by him along with the tender. The respondent directed to execute an agreement for carrying out the works with GST, which according to the petitioner, is not incorporated in the notice and therefore, the action is without jurisdiction and illegal and therefore liable to be interfered with by this court.

Decision of Advance Ruling Authority :**Decision**

Court held that, there is a stipulation contained under clause 44 of tender notice that, the Sales Tax as per Rules from time to time is liable to be paid by the petitioner. So after the introduction of CGST Act 2017, the petitioner is liable to pay GST. The Court held the opinion that, petitioner is not entitled

to get any relief as is sought for in the writ petition since there was a clear stipulation that, petitioner is liable to pay tax increased from time to time. The writ petition has no sustenance, accordingly it is dismissed.