

GIB/KR/SHEEN GOLDEN/11-01-2019/HC-96**High Court Category :** Others**State :** Kerala**Order No.:** GIB/KR/SHEEN GOLDEN/11-01-2019/HC-96**Name of Entry :**

Sheen Golden Jewels (India) Pvt.Ltd

Date : 11-01-2019**Breif Issue :****Facts & Issue of the case**

The petitioner, a Private Limited Company, is a dealer under the Kerala Value Added Tax Act and Central Sales Tax Act has opted to pay the tax at the compounded rates under Section 8 of the KVAT Act. for the assessment years (AY) and 2011-2012 and thereafter, too, the petitioner filed returns in terms of the compounding scheme-in Form 10DA.

Petitioner's question is, does the State have the legislative competence to enact section 174 and save the past taxation events—comprising levy, assessment, and recovery—when Entry 54, List II, which is the field of legislation empowering the State, stood omitted permanently with effect from 16.09.2017. The petitioner in writ petitions stated the issue of the legality of the notices and assessment orders issued to the petitioner in connection with the assessment under the Kerala Value Added Tax Act for the assessment years 2010-11 and 2011-12. The petitioner claimed that the notices and orders are impugned, inter alia, on the ground that the authorities concerned did not have the jurisdiction to issue them since the amendments introduced to Section 25 (1) of the KVAT Act, through the Kerala Finance Acts of 2017 and 2018, notified through gazette notifications dated 19.06.2017 and 31.03.2018 respectively, did not contemplate a retrospective operation of the amended provisions. In the petition filed, **the petitioner has questioned the constitutional validity of Section 174 of the Kerala State Goods and Service Tax Act, 2017.** According to the petitioner, the Savings & Repeals Provisions under the said section is volatile of **clauses 2, 17 & 19 of the 101st Constitutional Amendment Act, 2016.** The petition further stated that Section 174 is deprived of any power and therefore any penalty proceedings initiated under it is invalid. Based on these, the petitioner submits that the Revenue cannot impose penalties for the AY 2010-11, 2011-12 in February 2018.

Decision of Advance Ruling Authority :**Decision:**

The High Court found no merit in the writ petitions; accordingly, dismissed all the writ petitions also it clarified that in all writ petitions various issues arise and constitutionality is only one of them and

mentioned even a single issue has many shades of a challenge. After examining the matter the court has posted the matter for 14th April for fixation of date, for final hearing. Court admitted the Writ Petition and stayed the recovery of the penalty. The High Court also granted the stay against all coercive proceedings till the matter is disposed of.