IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR.JUSTICE JOBIN SEBASTIAN

MONDAY, THE 15TH DAY OF DECEMBER 2025 / 24TH AGRAHAYANA, 1947

WA NO. 1745 OF 2025

AGAINST THE JUDGMENT DATED 29.09.2020 IN WP(C) NO. 12941 OF 2020 OF HIGH COURT OF KERALA

APPELLANT/PETITIONER:

M/S. BHARTI AIRTEL LIMITED
SL AVENUE, N.H. BYPASS, KUNDANOOR, MARADU, COCHIN,
REPRESENTED BY ITS AUTHORISED SIGNATORY, MRS.
SHEENA SAMUEL., PIN - 682304

BY ADVS.
SMTG.MINI(1748)
SHRI.A.KUMAR (SR.)
SHRI.P.J.ANILKUMAR
SRI.P.S.SREE PRASAD

RESPONDENTS/RESPONDENTS:

1 UNION OF INDIA,
THROUGH SECRETARY, MINISTRY OF FINANCE,
DEPARTMENT OF REVENUE, NORTH BLOCK, NEW DELHI,
PIN - 110001

2 STATE OF KERALA,
REPRESENTED BY ITS SECRETARY, MINISTRY OF FINANCE,
THIRUVANANTHAPURAM-695001.

3 ASSISTANT COMMISSIONER,
SPECIAL CIRCLE-III, STATE GOODS AND SERVICES TAX
DEPARTMENT, ERNAKULAM-682015.

4 SUPERINTENDENT OF CENTRAL EXCISE,
BHARTI AIRTEL RANGE, RANGE V, OURGAON,
HARYANA, PIN - 122001

2025:KER:96454

BY ADVS.
SRI.MOHAMMED RQFIQ, SPECIAL G.P. FOR R2 & R3

SHRI.V.GIRISHKUMAR, SC, CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 15.12.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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J U D G M E N T

Dr.A.K.Jayasankaran Nambiar, J.

This writ appeal is preferred against the judgment dated 29.09.2020 in WP(C).No.12941 of 2020 to the extent the said judgment did not deal with the arguments of the petitioners regarding the merits of an assessment order that was impugned in the writ petition. The circumstances under which this appeal came to be filed before this Court are as follows;

2. The appellant herein had approached this Court through WP(C).No.12941 of 2020 impugning an assessment order that was passed against it, *inter alia* on the ground that the said assessment order was barred by limitation. The essence of the contention raised before the writ court was that Section 25(1) of the Kerala Value Added Tax Act, 2003 (hereinafter referred to as the “KVAT” Act) had provided for a period of six years for completion of assessment and since the assessment in question was for the assessment year 2013-14, the notice issued to the appellant in the instant case was beyond the period of limitation prescribed under Section 25(1) of the KVAT Act and consequently, the assessment order that was impugned in the writ petition had also to be seen as one passed without jurisdiction. There was also an alternate challenge to the merits of the assessment order.

3. The learned Single Judge by the impugned judgment, found

in favour of the appellant on the ground of limitation and therefore allowed the writ petition by setting aside the impugned order of assessment. The contention of the petitioner with regard to the merits of the assessment was not gone into by the learned Single Judge.

4. The Revenue, being aggrieved by the finding of the learned Single Judge on limitation had approached this Court through a writ appeal (W.A.No.1748 of 2020) contending *inter alia* that it was an erroneous appreciation of facts that had led the learned Single Judge to allow the writ petition in favour of the appellant herein. It was pointed out that the notice under Section 25(1) of the KVAT Act in the instant case was issued within a period of six years, on 16.01.2019, and inasmuch the notice pertained to the assessment year 2013-14, it could not be said to be belated going by the amended provisions of the KVAT Act. On a consideration of the said submission on behalf of the appellant/State, the Division Bench found that the amendment to Section 25(1) of the KVAT Act had come about in 2017 itself when the time limit for issuance of notice was enlarged from five years to six years, and the notice issued to the appellant herein was within the six year period of limitation that was operative for the assessment year 2013-14. The Division Bench therefore found that the impugned judgment of the learned Single Judge suffered from an erroneous appreciation of facts and therefore, proceeded to allow the writ appeal by dismissing the writ petition preferred by the appellant herein on the ground of limitation. While dismissing the writ petition and allowing

the writ appeal preferred by the State, the Division Bench also made it clear that it would be open to the appellant herein to approach the first appellate authority under the KVAT Act in a challenge against Ext.P6 assessment order on merits by filing a statutory appeal within a month from the date of receipt of a copy of the judgment in the writ appeal.

5. It would appear that in the meanwhile many writ petitions, including writ petitions filed by the appellant herein impugning assessment orders passed by the authorities under the KVAT Act for different assessment years (other than 2013-14), and involving the same issue, came up for consideration before a Single Bench of this Court. Those writ petitions were disposed by the learned Single Judge vide judgment dated 28.06.2024 in WP(C).No.482 of 2021 and connected cases by finding in favour of the assessees on the issue of propriety of assessment under the KVAT Act of turnover relating to services supplied by the assessees. The learned Single Judge took note of the judgment of the Andhra Pradesh High Court in State of **Andhra Pradesh v. Bharat Sanchar Nigam Ltd. - [(2012) 49 VST 98]** and the **order dated 11.04.2023 in SLP(C).Nos.16551-16555 of 2012** that dismissed the Special Leave Petitions preferred against the aforementioned judgment of the Andhra Pradesh High Court by giving detailed reasoning, to hold that the order of the Supreme Court affirming the judgment of the Andhra Pradesh High Court constituted a binding precedent for the purposes of Article 141 of the Constitution of India.

6. Thereafter, the learned Single Judge proceeded to consider the arguments advanced by the learned Senior Government Pleader on the merits of the issue raised in the writ petition, and proceeded to hold that in view of the clear finding in the order of the Supreme Court that affirmed the view of the High court of Andhra Pradesh in the judgment referred above, SIM cards, rechargeable coupons, fixed monthly charges and value added services (towards SMS, ringtones, download music etc.) could not be termed as ''goods'' for the purposes of the KVAT Act. The writ petitions were therefore allowed and the orders impugned in those writ petitions were quashed to the extent they demanded tax under the KVAT Act on amounts received by the assessees towards SIM cards, rechargeable coupons, fixed monthly charges and value added services (towards SMS, ringtones, download music etc.) as they were not goods on which any tax under the KVAT Act could be levied.

7. It is significant that the State has not preferred any writ appeal against the said judgment dated 28.06.2024 of the learned Single Judge which concludes the issue involves in the assessment order in the instant case on merits as far as the appellant herein is concerned, albeit for other assessment years. Although at the time of hearing the present writ appeal, the learned Senior Government Pleader would point out that the State is still in the process of considering whether an appeal against the aforementioned judgment of the learned Single Judge should be filed or not, we are not persuaded to

accept the said submission, since we have not been shown any material that would suggest that the State has taken any positive action towards that end, during the last 18 months. We also note that even in the counter affidavit dated 25.10.2025 filed by the State in these proceedings there is no such averment. We must therefore proceed on the assumption that the State has accepted the aforementioned judgment of the learned single judge.

8. As for the facts in the present appeal, we find that the writ appeal, to the extent it impugns the judgment of the learned Single Judge for not considering the contentions of the appellant on the merits of the assessment order, was in fact filed belatedly. However, the circumstances under which the challenge to the impugned judgment arose needs to be noticed. The impugned judgment of the learned Single Judge had allowed the writ petition preferred by the appellant by finding solely on the aspect of limitation. Since, the appellant was not aggrieved by the said judgment that allowed the writ petition, it did not have to file a writ appeal at that stage. The occasion for filing this writ appeal arose only when the impugned judgment of the learned Single Judge, that decided only the issue of limitation, was taken in appeal before a Division Bench of this Court, and the said Division Bench allowed the appeal preferred by the State by finding that the learned Single Judge had erred on facts while considering the issue of limitation in terms of the statutory provision. It was at that stage, that the appellant-assessee herein became an aggrieved person for the purposes

of filing an appeal against the impugned judgment of the learned Single Judge, to the extent it had not considered the alternate challenge in the writ petition to the merits of the assessment order.

9. In the counter affidavit filed on behalf of the State, the principle of merger is highlighted to argue that inasmuch as the impugned judgment of the learned Single Judge was already carried in appeal by the State in W.A.No.1748 of 2020, and the Division Bench that heard the said appeal had, while exercising its appellate jurisdiction, reserved the liberty of the assessee to pursue his statutory appellate remedy under the KVAT Act in its challenge against the assessment order, it would not be proper for this Bench to consider a belated writ appeal preferred by the appellant challenging the very same judgment of the learned Single Judge that was impugned earlier by the State in W.A.No.1748 of 2020. The learned Special Government Pleader, Sri.Mohammed Rafiq would rely on the judgments in **M/s. Gojer Bros. (Pvt.) Ltd. v. Shri Ratan Lal Singh** [(1974) 2 SCC 453] in support of the said contention.

10. It is the further case of the respondent State that the assessing authority had made a valid distinction between the telecommunication service rendered by the appellant, and those which fell outside the purview of sales tax. The learned Special Government Pleader contends, therefore, that the facts in the case of the appellant herein are clearly distinguishable. He relies on the judgments in

Bharat Sanchar Nigam Ltd. v. Union of India (AIR 2006 1383 (SC), **Tata Consultancy Services v. State of A.P.** [(2005) 1 SCC 308], **CST v. Quick Heal Technologies Ltd.** [(2023) 5 SCC 469], **State of Kerala v. Sathyam Audios [**(2024) GSTR 464]**, State of Kerala v. V. C. Vinod** (2023 SCC OnLine Ker 11394), **Samir Kumar Majumder v. Union of India and others** [(2024) 16 SCC 738], **M/s. Gojer Bros. (Pvt.) Ltd. v. Shri Ratan Lal Singh** [(1974) 2 SCC 453], **Kunhayammed and others v. State of Kerala and another** [(2000) 6 SCCC 359), **Experion Developers Private Limited v. Himanshu Dewan and Sonali Dewan and others** [(2023) 12 SCR 1118) and **P & O Nedlloyed BV v/ Arab Metals Co and others** [(2006) EWCA Civ 1717).

11. On a consideration of the aforesaid submissions of the learned Senior Government Pleader, we find that the learned Single Judge in the judgment in WP(C).No.482 of 2021 and connected cases referred above, had considered the contention of the learned Senior Government Pleader that downloaded music cannot be equated with telecommunication services and therefore would fall outside the scope of service tax, and had rejected the same while holding *inter alia* that downloaded music would not fall within the definition of “goods” on which tax under the KVAT Act could be levied.

12. We have chosen to highlight the judgment of the learned Single Judge in WP(C).No.482 of 2021 and connected cases at this

stage solely because the said judgment, which has not been challenged by the State in further proceedings, virtually follows the judgment of the Andhra Pradesh High Court, as affirmed by the Supreme Court, while deciding the merits of the issue involved in the assessment order. That apart, the finality conferred on the said judgment of the learned Single Judge also renders meaningless, any liberty granted to the assessee herein to pursue a statutory remedy against the assessment order since the statutory authority cannot ignore the aforementioned binding judgment of the learned single judge. In our view, when a final decision on the merits of the issue already holds sway, we would be perfectly within our jurisdiction to allow this appeal that impugns a judgment of the single judge to the extent that it did not consider the challenge to the assessment order on merits, and quash the assessment order impugned in the writ petition.

13. As for the contention of the State that the principles of merger would prevent the appellant herein from mounting a belated challenge against the impugned judgment of the learned Single Judge, we are of the view that the principles of merger would have no application in a situation such as the present. As already noticed, the earlier Division Bench, while disposing the appeal preferred by the State, had only reserved a liberty in the assessee to pursue his alternative remedy under the statute. When the issue on merits is now covered by a binding precedent of the Supreme Court, and the attempt of the State to distinguish the said precedent did not meet with any

success before a learned Single Judge of this Court against whose judgment no appeal was preferred by the State, it would be meaningless to relegate the appellant-assessee before the statutory authorities in a challenge to the merits of the assessment order involving the same issue.

The writ appeal is thus allowed by quashing Ext.P6 assessment order to the extent it demands tax under the KVAT Act on amounts received by the appellant towards SIM cards, rechargeable coupons, fixed monthly charges and value added services (towards SMS, ringtones, download music etc.) as they are not goods on which any tax under the KVAT Act can be levied.

Sd/-
DR. A.K.JAYASANKARAN NAMBIAR
JUDGE

Sd/-
JOBIN SEBASTIAN
JUDGE

ANS

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APPENDIX OF WA NO. 1745 OF 2025

PETITIONER ANNEXURES

Annexure A	**TRUE COPY OF THE JUDGMENT IN W.A. NO.1748/2020 DATED 27.03.2025 OF THIS HONOURABLE COURT**
Annexure B	**TRUE COPY OF THE REVIEW PETITION NO.708/2025 FILED IN W.A. NO. 1748/2020 OF THIS HON'BLE COURT.**
Document No.1	**Cost receipt issued by the Kerala State Legal Services Authority dated 07.08.2025**