



# Lawgics

By Nidhi, Advocate



**Judgment No.: 077**  
**Dt.: 27-02-2024**



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## Judgment Deals With

<b>Section/Rule</b>	Section 63
<b>Authority</b>	Kerala High Court
<b>Case Name</b>	Kumaran K.V. VS State Tax Officer (Intelligence)
<b>Dated</b>	07 <sup>th</sup> February, 2024

### Brief Facts:

The assessment order was passed under Section 63 of the CGST/SGST Act in respect of the financial years from 2017-18 to 2021-22, holding that a sum of Rs.4,13,88,040/- collected by the petitioner from the customers as service fee for the aforementioned period is liable to be assessed to tax @18%. The petitioner was directed to pay a total sum of Rs. 1,90,66,593/- towards tax, penalty, and interest. The petitioner filed the writ petition which was dismissed by the learned Single Judge, relegating the petitioner to the statutory remedy of appeal.

Now, the petitioner is challenging the said judgment.

### Contention of the Petitioner:

The petitioner is the proprietor of 'Kumar Motor Driving School', whereas his wife is the proprietor of 'Kumar Motors' and both are separate and distinct entities. The Department took both proprietorship concerns as one entity, clubbed the income of both and made the assessment. The clubbing of turnover of 'Kumar Motor Driving School' and 'Kumar Motors' is without any factual justification and is illegal.

### Findings & Decision of the Court:

The questions whether these proprietorship concerns are one and the same and whether the turnover of these concerns could be clubbed together for assessment, etc., are disputed questions of fact, which cannot be adjudicated in a writ petition.

Hence, the learned Single Judge was absolutely justified in dismissing the writ petition, relegating the appellant to the appellate remedy.

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