IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 19TH DAY OF FEBRUARY 2015/30TH MAGHA, 1936

WA.No. 2486 of 2007 ( ) IN WP(C)NO.24566/2007

AGAINST THE JUDGMENT IN WP(C) 24566/2007 of HIGH COURT OF KERALA DATED 17-08-2007.

APPELLANT/PETITIONER:

MS.EXCEL TIMBERS PVT. LIMITED,
PETTA, FEROKE, CALICUT,
BY MANAGING DIRECTOR, V.MAMMU.

BY ADVS.SRI.P.RAGHUNATH
SRI.PREMJIT NAGENDRAN

RESPONDENTS/RESPONDENTS:

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1. THE INTELLIGENCE OFFICER (IB),
COMMERCIAL TAXES, KOLLAM.

2. STATE OF KERALA,
REPRESENTED BY COMMISSIONER OF COMMERCIAL TAXES
THIRUVANANTHAPURAM.

BY SPECIAL GOVERNMENT PLEADER (TAXES)
SRI. GEORGE MECHERIL

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 19-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**THOTTATHIL B. RADHAKRISHNAN &
K. HARILAL, JJ.**

W.A.No.2486 of 2007

Dated this the 19th day of February, 2015

JUDGMENT

Thottathil B. Radhakrishnan, J.

The writ petitioner is the appellant. Heard the learned senior counsel for the appellant and the learned Special Government Pleader for the Department of Commercial Taxes.

2. Writ petitioner faced proceedings initiated under Section 45A of the KGST Act. The show cause notice does not, particularly, point out any of the enumerated grounds in terms of that provision to invoke the power to impose penalty. Assuming that a homogeneous presentation of the allegations could be made, we see that what ultimately turns out is the

pointed allegation raised by the Intelligence Officer that the writ petitioner had effected delivery of goods on the basis of Form 18 declarations furnished by the purchasing dealer and the purchasing dealer had produced the professed counterfoils which did not tally with the original of Form 18 declarations furnished along with the returns of the selling dealer, namely, the writ petitioner. Barring that, there is only the omnibus statement that books of accounts were not produced in spite of notices.

3. With the aforesaid, we see from the impugned judgment that there was an earlier writ petition; W.P.(c) No.33646 of 2005; initiated by one Moideen whose allegations were that declarations linked to some of his transactions were utilized in clandestine operations. Since that plea related to some activity, which may be called 'commercial fraud' in the State of Kerala in relation to dealings in timber, which would have depleted revenue to the exchequer; as prompted by this Court; there was an in-house look into that situation by the Commercial Taxes Department and also by the Vigilance and Anti-corruption Bureau. This

Court had also noticed thereafter in the judgment issued in that writ petition that even the Sub Inspector of Police, who was carrying on the investigation, was one 'not worthy of credence'. The most unfortunate fact is that all those proceedings got dumped in such a manner that any departmental official who would have been involved in those fraudulent transactions or in granting registration to a person whose identity was not even established, escaped scot-free. The net result of the aforesaid exercise was that the dealers, who supplied timber, on the basis of Form 18 declarations, were pulled up under penalty proceedings.

4. The writ petitioner challenged the penalty order. The learned single Judge, however, took the view that the petitioner has efficacious alternative remedy by way of statutory appeal and, therefore, refused to grant relief in the writ jurisdiction. Hence this appeal.

5. One thing is certain; the nature of the transaction, as put forth by the department in the impugned penalty proceedings, is that the writ

petitioner had produced Form 18 declarations provided by a purchasing dealer and that there was inconsistency between the counterfoil produced by the purchasing dealer and the original produced by the selling dealer. That is not a matter on which there could be a penalty proceedings against the selling dealer. This position in law is well settled, including through the Bench decision of this Court in Essar Oil Ltd. v. Intelligence Officer (Ker) [(2011) 37 VST 192 (Ker)] referred to on behalf of the appellant. That being the position in law, the learned single Judge ought to have concluded that the initiation of proceedings as against the selling dealer on the basis of the incongruity or contradiction as between the original and the counterfoils of Form 18 declarations of the purchasing dealer is unauthorised on the face of the relevant provisions of law.

6. For the aforesaid reasons, this writ appeal succeeds. This judgment will relate only to the issue regarding Form 18 declarations. Any other penalty proceedings shall be only with appropriate show cause notice to the assessee notifying the ground on which any

penalty is proposed. It is so directed.

In the result, the impugned judgment of the learned single Judge is set aside and the proceedings challenged in the writ petition are quashed, clarifying that anything stated in this judgment will not stand in the way of appropriate conclusions being arrived at in the assessment proceedings or any proceedings for imposition of penalty on the appellant on any ground in accordance with law. It goes without saying that such proceedings, if any, shall be with pre-decisional notice to the appellant and opportunity of hearing, in accordance with the laws.

Sd/-

(**THOTTATHIL B. RADHAKRISHNAN, JUDGE)**

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge