IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 27TH DAY OF MARCH 2015/6TH CHAITHRA, 1937

WA.No. 1149 of 2012 () IN WP(C).9036/2012
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AGAINST THE JUDGMENT IN WP(C) 9036/2012 of HIGH COURT OF KERALA DATED 08-06-2012

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APPELLANT(S)/PETITIONER:

BIJU RAVEENDRAN,
INTERFACE DESIGNERS,
ST. MARY'S SCHOOL ROAD,
ADOOR, PATHANAMTHITTA DISTRICT.

BY ADVS.SRI.HARISANKAR V. MENON
SMT.MEERA V.MENON
SRI.MAHESH V.MENON

RESPONDENT(S)/RESPONDENTS:
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1. **THE COMMERCIAL TAX OFFICER (WORKS CONTRACT).**
   OFFICE OF THE DEPUTY COMMISSIONER,
   DEPARTMENT OF COMMERCIAL TAXES,
   PATHANAMTHITTA-689645.

2. **STATE OF KERALA, REPRESENTED BY ITS SECRETARY,**
   TAXES DEPARTMENT, GOVT. SECRETARIAT,
   THIRUVANANTHAPURAM-695001.

BY SR. GOVERNMENT PLEADER SRI. LIJU V.STEPHEN

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 27-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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THOTTATHIL B. RADHAKRISHNAN & K. HARILAL, JJ.

Writ Appeal No.1149 of 2012

Dated this the 27th day of March, 2015.

JUDGMENT

Thottathil B. Radhakrishnan, J.

1. The writ petitioner is the appellant. He stood accused of not having taken registration under the Kerala Value Added Tax Act, 2003. Assessment was completed against him under Section 25 of the KVAT Act for the assessment year 2007-2008. He, thereafter, filed an application for registration in such a way as to enable him to satisfy the tax due at compounded rate. When that was turned down, he got an order from this Court and, consequently, the registration was given retrospectively. Pursuant to that, he paid the tax at compounded rate. Later, proceedings were taken up to reopen the assessment. He challenged it. The learned single Judge relegated him to avail statutory remedies. Hence, this appeal.

2. Though the learned counsel appearing for the appellant tried to make out a case that having been permitted to pay tax at compounded rate after granting registration with retrospective effect, the exercise by way of reopening ought not to have been resorted to unless other transactions for the period concerned have been unearthed; that is a plea that can be reasonably projected and taken up only if it is established before the appellate authority that there was no other transaction which could have led to the reopening of the assessment. That is an issue on which we ought not to adjudicate in this appeal. Hence, we leave open all rights of the appellant to pursue the appellate remedy. If appellate remedy is invoked within a period of three weeks from today, that appeal shall be entertained and the matter considered on its merits. Subject to that direction, this writ appeal as against the impugned judgment fails.

The appeal is ordered in terms of what is stated above and the interim order of stay granted in this case is directed to be maintained for a period of one month within which time any application pending appeal will be considered by the appellate authority.

Sd/-
THOTTATHIL B. RADHAKRISHNAN, JUDGE

Sd/-
K. HARILAL, JUDGE

okb.