IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

TUESDAY, THE 29TH DAY OF SEPTEMBER 2015/7TH ASWINA, 1937

WA.No. 1242 of 2012 () IN WP(C).12137/2012

AGAINST THE ORDER/JUDGMENT IN WP(C) 12137/2012 of HIGH COURT OF KERALA DATED 20-06-2012

APPELLANT(S)/PETITIONER:

P.K. KAMMED KUTTY,
PROPRIETOR, P.K.K. CONSTRUCTIONS, KEEZHUPARAMBA P.O.
AREACODE, MALAPPURAM DISTRICT.

BY ADVS.SRI.ANIL D. NAIR
SRI.J.R.PREM NAVAZ
SMT.NIVEDITA A.KAMATH

RESPONDENT(S)/RESPONDENTS:
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1. INTELLIGENCE OFFICER (IB),
COMMERCIAL TAXES, MALAPPURAM DISTRICT-676 505.

2. THE COMMERCIAL TAX OFFICER (WC&LT)
MALAPPURAM DISTRICT, PIN-676 505.

3. THE DEPUTY COMMISSIONER (APPEALS),
COMMERCIAL TAXES, ERNAKULAM-682 015.

4. THE ASSISTANT COMMISSIONER (APPEALS),
COMMERCIAL TAXES, FIRST FLOOR
NINAN'S COMPLEX, METTUPALAYAM STREET,
PALAKKAD-678 001.

R1-R4 BY ADV.SOBHA ANNAMMA EAPEN,
SR.GOVERNMENT PLEADER

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 29-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WA 1242/12

APPENDIX

APPELLANT'S EXHIBITS

NIL

RESPONDENTS' EXHIBITS

ANNEXURE-A : COPY OF ASSESSMENT ORDER DATED 12.03.2013 FOR THE YEAR 2006-07.

ANNEXURE-B : COPY OF ASSESSMENT ORDER DATED 12.03.2013 FOR THE YEAR 2007-08.

ANNEXURE-C : COPY OF ACKNOWLEDGMENT CARD EVIDENCING THE COMMUNICATION OF THE ASSESSMENT ORDER FOR 2006-07 AND 2007-08.

ANNEXURE-D : COPY OF RECEIPT EVIDENCING THE PAYMENT OF THE DUES AS PER ANNEXURE-A.

ANNEXURE-E : COPY OF RECEIPT EVIDENCING THE PAYMENT OF THE DUES AS PER ANNEXURE-B.

ANNEXURE-F : COPY OF APPELLATE ORDER NO.KVATA 1267/10 DATED 03.01.2011 PASSED BY THE DEPUTY COMMISSIONER (APPEALS), COMMERCIAL TAXES, ERNAKULAM.

ANNEXURE-G : COPY OF ORDER OF THE COMMISSIONER IN R.P.NO.33622/12/CT DATED 02.04.2013.

//TRUE COPY//

PA TO JUDGE.

jg-20/10

THOTTATHIL B.RADHAKRISHNAN &
ANU SIVARAMAN, JJ.

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W.A.No.1242 of 2012

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Dated this the 29th day of September, 2015.

J U D G M E N T

Thottathil B.Radhakrishnan, J.

This writ appeal is against the judgment of the learned single Judge refusing to interfere with a series of penalty orders passed in relation to four assessment years. The conclusion arrived at by the learned single Judge was that it would be inappropriate to resolve the issues in writ jurisdiction, having regard to the controversy between the parties as regards the actual facts and figures. When this writ appeal came up for admission, an interlocutory order is seen issued whereby an opportunity was extended to have the matter looked into further. This was done after noticing that the main grievance of the appellant is that even before the revision of assessments for the relevant years based on appellate orders were made, the Intelligence Officer had levied penalty for alleged suppression of taxable turnover. Under such circumstances, the Bench required the assessment proceedings to be completed, having regard to the remand made in the statutory appeals against the assessment orders. By now, the assessments of two years have been re-done and the materials have been produced. We have perused those materials produced by the learned Government Pleader. We dissuade ourselves from expressing anything on the merits of the claims in relation to the assessments or the penalty orders. On the whole, we are satisfied that ends of justice require that the orders impugned in the writ petition are set aside paving way for re-consideration of the penalty proceedings for the years 2005-06 to 2008-09 de novo, after completing the assessment proceedings for the year 2005-06 as well.

In the result, without expressing much on the merits of the claim of the assessee, the judgment of the learned single Judge and the statutory orders impugned in the writ petition are set aside paving way for re-consideration of the penalty proceedings in the light of what is stated above. The appellant-petitioner is directed to produce the books of accounts and all necessary documents as may be required even without any notice being issued in that regard. Let this be done within a period of one month from today. This writ appeal is ordered accordingly without expressing anything on the merits of the contentions relating to the contents of the penalty proceedings and the assessment proceedings.

(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

(ANU SIVARAMAN, JUDGE)

jg-30/9