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. 308 of 2015 () IN WP(C).1954/2015

AGAINST THE ORDER/JUDGMENT IN WP(C) 1954/2015 of HIGH COURT OF KERALA DATED 20-01-2015

APPELLANT(S)/PETITIONER:-:

M/S.GEMINI INDUSTRIES & IMAGING LTD.,
DIVISION 41, DOOR NO.830, PULLEPADY ROAD
ERNAKULAM, COCHIN - 682 035.

BY ADVS.SRI.JOSEPH PRABAKAR
SRI.RAJESH NAIR
SRI.BIJOY CHANDRAN

RESPONDENT(S)/RESPONDENTS:-:
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1. COMMERCIAL TAX OFFICER-IV,
COMMERCIAL TAXES, 2ND CIRCLE, ERNAKULAM
PIN - 682 030.

2. DEPUTY COMMISSIONER (APPEALS),
COMMERCIAL TAXES, ERNAKULAM - 682 030.

3. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY, TAXES
THIRUVANANTHAPURAM - 695 001.

BY ADV.LIJU V.STEPHEN, SR. GOVERNMENT PLEADER

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 19-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

THOTTATHIL B.RADHAKRISHNAN &
K.HARILAL, JJ.

....

W.A.No.308 of 2015

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Dated this the 19th day of February, 2015.

JUDGMENT

Thottathil B.Radhakrishnan, J.

1. We have heard the learned counsel for the appellant.

2. Under challenge is a judgment of the learned single Judge refusing to interfere with an interlocutory order passed in a statutory appeal pending under the provisions of the Kerala Value Added Tax Act, 2003, “Act”, for short. The appellate authority granted stay on condition of deposit of 30% and on furnishing security for the balance amount.

3. Though in the writ petition, the entire challenge was regarding the direction to remit 30%, in this appeal, the learned counsel for the appellant very persuasively requested us to consider the issue as to whether the original assessment order itself would be sustainable. He says that such issues are on issues of law and referred to the decision of this Court in Ahamed Kabeer v. State of Kerala [(2015) 77 VST 388 (Ker)] to point out that a question of

law can be raised at any point of time. We see that the said judgment was delivered by a Division Bench in a matter arising from the Appellate Tribunal under the Act and not on a matter pending before the Appellate Tribunal. Whatever be such issues, in relation to statutory matters; insofar as the writ appeal in hand is concerned, we have to only consider the correctness or otherwise of the judgment of the learned single Judge, which is appealed against. The learned single Judge has applied mind to the facts of the case as are relevant to decide the issues that were raised before him. The appellate authority under the Act had also applied mind and stated reasons for imposition of the conditions. Under such circumstances, the learned single Judge was well within jurisdiction to have dismissed the writ petition. We do not find any legal infirmity or jurisdictional error in the approach adopted by the learned single Judge; leaving open all issues to be raised in the statutory appeal; warranting interference in this intra-court appeal under Section 5 of the Kerala High Court Act, 1958 . The writ appeal, therefore, fails.

In the result, this appeal is dismissed, however ordering that the time limit granted by the learned single Judge to comply with the directions in the impugned stay order shall stand extended by three weeks from today, as last chance.

(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

(K.HARILAL, JUDGE)

jg