IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 9TH DAY OF MARCH 2015/18TH PHALGUNA, 1936

WA.No. 547 of 2015 () IN WP(C).15567/2012

AGAINST THE ORDER/JUDGMENT IN WP(C) 15567/2012 of HIGH COURT OF KERALA DATED 27-08-2014

APPELLANT(S):/RESPONDENTS
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1. THE SALES TAX OFFICER
WC&LT, OFFICE OF THE SALE TAX OFFICER,
KOZHIKODE.

2. THE DEPUTY COMMISSIONER (APPEALS)-1,
OFFICE OF THE DEPUTY COMMISSIONER,
COMMERCIAL TAXES,
KOZHIKODE.

3. THE COMMERCIAL TAX OFFICER,
WORKS CONTRACT AND LUXURY TAX,
SALES TAX COMPLEX,
JAWAHAR NAGAR, KOZHIKODE.

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

RESPONDENT(S):/PETITIONER

SRI K.P CHANDRADASAN, AGED 58 YEARS,
S/O.APPUTTY, VISWA HINDU BHAVAN LODGE
CHALAPPURAM, KOZHIKODE DISTRICT - 673 002.

BY SRI.SUNNY MATHEW

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 09-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

THOTTATHIL B.RADHAKRISHNAN &
K.HARILAL, JJ.

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W.A.No.547 of 2015 and C.M.Appl. No.300 of 2015

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Dated this the 9th day of March, 2015.

J U D G M E N T

Thottathil B.Radhakrishnan, J.

1. This writ appeal comes up with an application seeking condonation of delay of 125 days in its institution.

2. We have heard the learned Senior Government Pleader in support of the merits of the application seeking condonation of delay, as also, on the issue as to whether the appeal against the judgment of the learned single Judge merits admission.

3. The writ petitioner claimed refund for the assessment year 1998-99. Admittedly, as a works contractor, he had carried out certain construction works. He filed return claiming exemption on the entire declared turnover, on the ground that the goods utilised in the contract had already suffered tax. Since his application for refund was not responded to, in accordance with the laws, he

filed the writ petition from which this appeal arises.

4. The learned single Judge noted that the assessment order was set aside in appeal and no second appeal was filed on behalf of the Revenue within the prescribed time limit. The application seeking refund was filed within the period prescribed. This Court had, earlier, directed consideration of that application by ordering WP(C) No.3102 of 2012. The learned Judge noted that the application for refund definitely stands and there was no go for the department but to accept the returns and order refund. The learned single Judge was fully justified in relying on the decision of the Apex Court in Commissioner of Income Tax v. Shelly Products and Another [261 ITR 367] to hold that once the income as disclosed in the return furnished by the assessee is accepted, the assessee is entitled to refund of any tax paid in excess of the liability incurred by him on the basis of the income disclosed. That principle, necessarily, applies to sales tax matters as well, more particularly, having regard to Article 265 of the Constitution

of India.

5. For the aforesaid reasons, we see no merit in the appeal.

6. The aforesaid position notwithstanding, we see no syllable of proper explanation in the affidavit filed in support of the application seeking condonation of delay to excuse the delay of 125 days in instituting this appeal.

In the result, the C.M.Application and the writ appeal are dismissed in limine.

(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

(K.HARILAL, JUDGE)

jg