IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 17TH DAY OF MARCH 2015/26TH PHALGUNA, 1936

WA.No. 626 of 2015 () IN WP(C).26949/2014

AGAINST THE JUDGMENT IN WP(C) 26949/2014 of HIGH COURT OF KERALA DATED 18-02-2015.

APPELLANT(S)/(WRIT PETITIONER):

DILEEP KUMAR V.S.,
VAYAKKATTIL HOUSE, ENGANDIYOOR P.O.,
THRISSUR DISTRICT, PIN 680615.

BY ADVS.SRI.M.V.BOSE
SRI.VINOD MADHAVAN
SMT.NISHA BOSE

RESPONDENT(S)/(RESPONDENTS IN W.P.(C):
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1. UNION OF INDIA,
REPRESENTED BY SECRETARY TO FINANCE,
MINISTRY OF FINANCE (DEPARTMENT OF REVENUE)
NORTH BLOCK, NEW DELHI-110001.

2. THE COMMISSIONER,
CENTRAL EXCISE, CUSTOMS & SERVICE TAX APPEALS,
C.R.BUILDING, I.S.PRESS ROAD, COCHIN-682018.

R2 BY ADV. SRI.SAIBY JOSE KIDANGOOR, SC.
R1 BY SRI.N.NAGARESH, ASSISTANT SOLICITOR
GENERAL OF INDIA

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 17-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

THOTTATHIL B. RADHAKRISHNAN &
K. HARILAL, JJ.

W.A. No. 626 of 2015

Dated this the 17th day of March, 2015

JUDGMENT

Thottathil B. Radhakrishnan, J.

We heard the learned counsel for the appellant.

2. This appeal is against the judgment by which the learned single Judge has relegated the writ petitioner for a statutory appeal against the impugned order. The fact that such statutory appeal is available to him in terms of law is not in dispute.

3. The question raised by the appellant is as to whether the activity of the appellant is one on which service tax could be levied. The learned single Judge rightly noted that the said question can be determined in the statutory appeal. Another plea raised before the learned single Judge was as to the requirement to make remittances for

consideration of the appeal. The learned single Judge has noted that even as per the amended provisions, there is a trimming down of the pre-deposit required to sustain such appeal. We are not impressed to take the view that the issue of jurisdiction or limitation, as raised by the petitioner, is a pure question of law which affects the jurisdiction in such manner as would be available for adjudication of the writ jurisdiction without examination of the questions of facts arising for decision on the basis of the contract that the petitioner has with the State Government.

4. In the aforesaid view of the matter, we do not see our way to find that there is any illegality in the decision of the learned single Judge. We are of the view that no ground exists for entertaining this intra-court appeal.

In the result, this writ appeal is dismissed in limine.

Sd/-

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

Sd/-

(K. HARILAL, JUDGE)

Nan/ //true copy// P.S. to Judge