IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THURSDAY, THE 10TH DAY OF DECEMBER 2015/19TH AGRAHAYANA, 1937

WA.No. 642 of 2015 () IN WP(C).21084/2014

AGAINST THE ORDER/JUDGMENT IN WP(C) 21084/2014 of HIGH COURT OF KERALA DATED 20-02-2015

APPELLANT(S)/APPELLANT/PETITIONER:

PREMIUM FERRO ALLOYS LIMITED,
EDAYAR,
BINANIPURAM ALWAYE (REPRESENTED BY ITS MANAGING
DIRECTOR SHRI S.S AGARWAL)

BY ADVS.SRI.K.LAKSHMINARAYANAN
SMT.SATHYA SHREEPRIYA

RESPONDENT(S)/RESPONDENTS/RESPONDENTS:
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1. STATE OF KERALA
COMMERCIALT AXES DEPARTMENT,
THIRUVANANTHAPURAM (REPRESENTED BY JOINT COMMISSIONER-1)

2. THE INTELLIGENCE OFFICER(IB),MATTANCHERY,
OFFICE OF THE DEPUTY COMMISSIONER,COMMERCIAL TAXES,ERNAKULAM.

3. THE ASSITANT COMMISSIONER(INSPG)
MATTANCHERY COMMERCIAL TAXES, ERNAKULAM

4. THE DEPUTY COMMISSIONER APPEALS,
DEPARTMENT OF COMMERCIAL TAXES, GOVT. OF KERALA
EDAPPALLY, KOCHI 24

5. THE APPELLATE ASSISTANT COMMISSIONER,
OFFICE OF THE DEPUTY COMMISSIONER, COMMERCIAL TAXES
KANNUR ERNAKULAM

R1-R5 BY SR. GOVERNMENT PLEADER SMT.SOBHA ANNAMMA EAPAN

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 10-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

THOTTATHIL B.RADHAKRISHNAN
&
ANU SIVARAMAN, JJ.

W.A.No. 642 of 2015

Dated this the 10th December, 2015

JUDGMENT

Thottathil B.Radhakrishnan, J.

Heard learned counsel for the appellant and the learned Senior Government Pleader.

2. Writ petitioner is the appellant. It imported furnace oil into the State of Kerala. Payment of entry tax was insisted upon for entry of those goods into the State of Kerala. That was paid. It is submitted by the learned counsel for the writ petitioner that the statutory proceedings were ultimately decided in relation to that particular transaction in favour of the writ petitioner. Consequent on that, a request for refund was made. That was not acceded to by the department. Hence the writ petition was filed. The learned single Judge noted that levy of entry tax was found against by this Court through the judgment reported in

Thressiamma L.Cherayil v. State of Kerala (2007(1) KLT 3031) holding that such levy infracts Article 301 of the Constitution of India and is, therefore, unsustainable. The learned single Judge noticed that the said judgment is pending consideration in appeal before the Honourable Supreme Court of India. Accordingly, the learned single Judge directed the official respondent to provisionally adjust the refund amounts that are due to the assessee by way of entry tax and penalty amounts paid by it as detailed in Exhibit P5, against the future tax demands raised on the writ petitioner under the KVAT Act. It was made clear that in the event of a decision of the Apex Court in favour of the assessee, it will be open to the writ petitioner to approach the official respondent with a claim for interest on the delayed refund. If the decision is against the assessee, it would be open to the department to claim the amounts adjusted by the assessee.

3. In the light of the fact that the correctness of the decision in ***Thressiamma L.Cherayil's case (supra)*** is

pending before the Apex Court, we are unable to hold that the learned single Judge had acted erroneously or illegally in moulding the relief in the manner it has been done through the judgment impugned.

4. Learned counsel for the appellant refers to the judgment of the Supreme Court in ***Kerala State Electricity Board v. M.R.F.Limited*** [(1996)1 SCC 597]. That decision was rendered holding that in the absence of any interim order by the Apex Court granting stay of operation of the judgment impugned in the appeal, the judgment of the High Court would be binding between the parties to the lis. The pendency of the appeal does not in any manner affect the correctness of the judgment which is subjected to the appeal. That the institution of appeal would not put a judicial order to peril is the settled principle of law. Yet such principle would not be the guiding factor to decide as to whether the learned single Judge, through the judgment impugned, had erred in law or on facts in issuing the directions which are contained in the judgment impugned.

We are of the view that the precedents cited on behalf of the appellant do not lead to the conclusion that an order of refund ought to have been made as sought for in the writ petition. We are satisfied that the directions issued by the learned single Judge advance course of justice. We see no ground to interfere with the impugned judgment. The writ appeal fails.

In the result, this writ appeal is dismissed.

THOTTATHIL B.RADHAKRISHNAN
JUDGE

ANU SIVARAMAN
JUDGE

vgs11/12