IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 6TH DAY OF APRIL 2015/16TH CHAITHRA, 1937

WA.No. 644 of 2015 () IN WP(C).6797/2015
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AGAINST THE ORDER/JUDGMENT IN WP(C) 6797/2015 of HIGH COURT OF KERALA DATED 04-03-2015

APPELLANT(S)/PETITIONER:-

SREE RAMACHANDRAN ENTERPRISES,
TC 37/151, PADMA NAGAR, FORT,
THIRUVANANTHAPURAM - 695 023,
REPRESENTED BY ONE OF ITS PARTNERS.

BY ADVS.SMT.SUMATHY DANDAPANI (SR.)
SRI.MILLU DANDAPANI

RESPONDENT(S)/RESPONDENTS:
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1. **THE INTELLIGENCE OFFICER,**
   SQUAD NO.1, COMMERCIAL TAXES,
   THIRUVANANTHPAURAM - 695 002.

2. **DEPUTY COMMISSIONER,**
   DEPARTMENT OF COMMERCIAL TAXES, TAX TOWERS, KARAMANA,
   THIRUVANANTHAPURAM - 695 002.

3. **COMMISSIONER,**
   DEPARTMENT OF COMMERCIAL TAXES,
   THIRUVANANTHAPURAM - 695 002.

4. **ASSISTANT COMMISSONER,**
   SPECIAL CIRCLE, COMMERCIAL TAXES, KARAMANA,
   THIRUVANANTHAPURAM - 695 002.

R1 TO R4 BY SRI.LIJU V.STEPHEN, GOVERNMENT PLEADER

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 06-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

DG

THOTTATHIL B.RADHAKRISHNAN &
K.HARILAL, JJ.

W.A.No.644 of 2015

Dated this the 6th day of April, 2015

J U D G M E N T

Thottathil B.Radhakrishnan, J.

1. Heard learned counsel for the appellant and the learned Government Pleader. This appeal is against a judgment by the learned single Judge, refusing to interfere with a penalty order under the provisions of the Kerala Value Added Tax Act, 2003. Writ jurisdiction was refused to be exercised on the ground that the impugned Exhibit P3 order is not initiated on its jurisdictional count and the irregularity, if any, that could be pointed out with reference to the earlier order of remit made by the appellate authority through Exhibit P2 is not such as could be one which would generate exercise of writ jurisdiction.

2. The learned senior counsel for the appellant made serious effort to attack Exhibit P3 on the basis of the findings in

Exhibit P2 order of remit in the earlier round. She clearly points out that going by the terms of Exhibit P2, Exhibit P3 ought not to have been made having regard to the different materials already placed before the Intelligence Officer. We see that the learned single Judge has applied his mind to all such contentions, including the question as to whether in discretionary writ jurisdiction, it would be advisable to exercise power in preference to the statutory appellate remedy available to the assessee who faces the penalty order, though that was preceded by an order of remit in an earlier appeal against the penalty order as originally imposed. We see that the learned single Judge has clearly found that the issues pointed out by the writ petitioner are not such as would affect the jurisdiction of the 1st respondent, Intelligence Officer in passing Exhibit P3 order and the petitioner can get the irregularities in the impugned order rectified through appellate and revisional remedies provided under the statute. The learned single Judge having exercised the jurisdiction, which is in the realm of discretionary, in such manner, we do not find it appropriate for us to intervene through this intracourt appeal under Section 5 of the High Court Act. We find no ground to entertain this writ appeal. Hence, it fails.

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

Sd/-
(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

Sd/-
(K.HARILAL, JUDGE)

//TRUE COPY//

P.A TO JUDGE

DG