IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 25TH DAY OF MARCH 2015/4TH CHAITHRA, 1937

WA.No. 670 of 2015 () IN WP(C).7324/2015

AGAINST THE ORDER/JUDGMENT IN WP(C) 7324/2015 of HIGH COURT OF KERALA DATED 09-03-2015

APPELLANT(S):/PETITIONER

M/S. ALPHA INTERNATIONAL TRADERS
XI/359, MANNARKKAD PANCHAYATH, MANNARKKAD,
REPRESENTED BY ITS MANAGING PARTNER,
MOHAMMED ASRAF.

BY ADVS.SRI.HARISANKAR V. MENON
SMT.MEERA V.MENON
SRI.MAHESH V.MENON

RESPONDENT(S):/RESPONDENTS
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1. THE COMMERCIAL TAX OFFICER-1
DEPARTMENT OF COMMERCIAL TAXES,
MANNARKKAD, PIN - 678 682.

2. STATE OF KERALA
REPRESENTED BY ITS SECRETARY,
TAXES DEPARTMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.

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

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 25-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

THOTTATHIL B.RADHAKRISHNAN &
K.HARILAL, JJ.

....

W.A.No.670 of 2015

....

Dated this the 25th day of March, 2015.

<u>J U D G M E N T</u>

<u>Thottathil B.Radhakrishnan, J</u>.

1. Admitted. Learned Senior Government Pleader appears for the respondents.

2. On consent of parties, heard finally.

3. Appellant challenged assessment order issued under the Kerala Value Added Tax Act, 2003 by invoking writ jurisdiction. The pointed plea of the appellant was that the assessment order itself reflects the pleadings by way of objections, and the particular ground of objection made dependent on the appellate order for the previous assessment year has itself been ignored without being answered.

4. The learned single Judge has rightly noted that the assessment

officer had noticed existence of such appellate order for the previous assessment year as was projected by the appellant, however that, the assessment order remains silent about the acceptability or otherwise of that ground of objection. In the fitness of things, therefore, statutory appeal to which the appellant was relegated, though may be a remedy, it ought to have been considered whether the assessment authority could be directed to re-consider the whole issue. The learned single Judge having chosen to relegate the writ petitioner to statutory appellate remedy, we are of the view that having regard to the facts and circumstances of the case, it is necessary that the appeal that may be filed by the appellant in this appeal in relation to the assessment order which is impugned, ought to be entertained and decided without insisting on any pre-condition as to deposit either to entertain that appeal or to stay recovery proceedings on the basis of the assessment order impugned.

In the result, this writ appeal is ordered modifying the impugned judgment and directing that if the appellant files statutory appeal against the assessment order, which is the subject matter of this writ appeal, within a period of two weeks from today, that appeal will be decided without insisting on any pre-condition as to deposit. Recovery on the basis of the assessment order will stand stayed till disposal of the appeal.

(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

(K.HARILAL, JUDGE)

jg