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. 690 of 2015 ()

AGAINST THE JUDGMENT IN WP(C) 16248/2013 OF THIS HONOURABLE COURT DATED 15.7.2014

APPELLANTS/RESPONDENTS:
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1. THE COMMERCIAL TAX OFFICER, WC & LT ,
OFFICE OF THE DEPUTY COMMISSIONER, COMMERCIAL TAXES
THRISSUR 680 003

2. THE DEPUTY COMMISSIONER
COMMERCIAL TAXES, THRISSUR 680 003

BY SENIOR GOVERNMENT PLEADER SRI.LIJU V.STEPHEN

RESPONDENT/PETITIONER:

RAJAN M
MECHUR HOUSE, PUDUKKAD 680 301 THRISSUR

R BY SRI.JOSE JOSEPH, SC, FOR INCOME TAX

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

WA.No. 690 of 2015 ()

ANNEXURE:

PETITIONERS' ANNEXURE:

ANNEXURE (A) : TRUE COPY OF T.A.NO.33/2012 FOR THE YEAR 20003-20004.

ANNEXURE (B) : TRUE COPY OF T.A.NO.34/2012 FOR THE YEAR 2004-2005.

/TRUE COPY/

rka **P.S. to Judge.**

THOTTATHIL B. RADHAKRISHNAN
&
K. HARILAL, JJ.

W.A.No. 690 of 2015
&
C.M. Appl. No. 376 of 2015

Dated this the 25th day of March, 2015

J U D G M E N T

Thottathil B. Radhakrishnan, J.

This appeal by the State comes up with an application seeking condonation of delay of 201 days. The writ appeal is addressed against the judgment of the learned single Judge quashing suo motu revisional power sought to be invoked under Section 35 of the KGST Act, 1963.

2. We have heard the learned Senior Government Pleader.

3. The respondent/assessee obtained Exts.P1 and P2 orders completing assessment for the years 2003-2004 and 2004-2005 levying tax at the compounded rate applicable to civil contracts. A Fast Track Assessment Team constituted under Section 17(D) of the Act attempted to re-open it on the ground that the exigible rate that should have been applied was higher

than the one that was applied. The reason attributed was that the work undertaken by the contractor was not a civil contract work. That exercise stood struck down by this Court as one lacking jurisdiction. Ext.P5 judgment of the Division Bench of this Court rendered in writ jurisdiction has thus become final in favour of the assessee. Thereafter, suo motu power was sought to be invoked in accordance with Section 35 of the Act. Admittedly, the period to invoke suo motu revisional jurisdiction under Section 35 in terms of Section 35(2)(c) had run out by that time. The original assessment orders were passed on 22.7.2008, while the suo motu revision attempted was on 3.4.2013, long after the period of four years that elapsed in terms of Clause (c) of Section 35(2). Before the learned single Judge, the point that was attempted to be mooted out on behalf of the Revenue was that the writ proceedings before this Court, which culminated in Ext.P5 judgment, ought to be treated as proceedings by way of appeal that would fall within the realm of sub-section (2A) of Section 35 and the period of one year would be available from the date of Ext.P5 judgment, namely, 13.9.2012. As rightly noted by the learned single Judge, what is permitted under Section 35(2A) is to decide suo motu on a point, which has not been decided in an appeal or revision referred to in Clause (b) of sub-section (2) of Section 35. Writ jurisdiction is not an exercise which would fall within those clauses of the statutory provisions which are contained in Section 35(2). A writ petition under Article 226 of the Constitution or an intra-court appeal under the provisions of High Court Act would not fall to be treated as an appeal or revision for the purpose of Clause (2A) of Section 35 of the KGST Act.

4. The aforesaid position notwithstanding, in our view, the learned single Judge was fully justified in saying that what is attempted to be resurrected through suo motu revisional jurisdiction is nothing, but an issue as to the rate of tax, which was the subject matter of the attempt made through the Fast

Track Team constituted under Section 17(D) of the Act. This way also, the decision of the learned single Judge does not warrant any interference in this intra-court appeal. The impugned judgment is only to be affirmed.

5. Be that as it may, paragraph 4 or any other part of the affidavit filed in support of the application seeking condonation of delay, does not reflect any cause, much less sufficient cause to condone the delay of 201 days in instituting this appeal.

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

THOTTATHIL B. RADHAKRISHNAN
JUDGE

K. HARILAL
JUDGE

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