IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

TUESDAY, THE 9TH DAY OF JUNE 2015/19TH JYAISHTA, 1937

WA.No. 1056 of 2015 () IN WP(C).10175/2015

AGAINST THE JUDGMENT IN WP(C) 10175/2015 of HIGH COURT OF KERALA

APPELLANTS/RESPONDENTS:
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1. STATE OF KERALA
REP.BY ITS SECRETARY TO GOVERNMENT, TAXES DEPARTMENT
SECRETARIAT, THIRUVANANTHAPURAM - 695001.

2. THE ASSISTANT COMMISSIONER-II
COMMERCIAL TAXES, SPECIAL CIRCLE, THRISSUR - 680004.

3. THE DEPUTY COMMISSIONER (APPEALS)
COMMERCIAL TAXES, ERNAKULAM - 682 015.

4. THE INSPECTING ASSISTANT COMMISSIONER
COMMERCIAL TAXES, MINI CIVIL STATION
IRINJALAKUDA - 680 125.

BY GOVERNMENT PLEADER SRI.S.SUDHISH KUMAR

RESPONDENT/PETITIONER:

M/S.MIL CONTROLS LIMITED
MELADOOR P.O, MALA, THRISSUR
REP.BY ITS SENIOR MANAGER- FINANCE, SUBHASH S.

BY SRI.M.GOPIKRISHNAN NAMBIAR

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 09-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

T.R.RAMACHANDRAN NAIR &
K.P.JYOTHINDRANATH, JJ.

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W.A.No.1056 OF 2015

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Dated this the 9th day of June, 2015

<u>JUDGMENT</u>

<u>Ramachandran Nair, J.</u>

This appeal is filed by the State and such other authorities aggrieved by the judgment of the learned Single Judge.

2. The short facts are the following :

The writ petition was filed by the respondent aggrieved by that part of the order whereby conditional order of stay was granted in an appeal. The impugned demand was for the year 2008-09 and the respondent was granted a stay on condition of deposit of 30% of the outstanding demand of Rs.7,26,360/-.

3. While considering the matter, the learned Single Judge was of the view that the issue of limitation raised as regards reopening of assessment ought to have been considered and prima facie there is a case for the respondent. Ultimately this Court directed the first appellate authority to consider the appeal on merits and an order of stay

has also been granted.

4. The learned Senior Government Pleader vehemently contended that the learned Single Judge has not exercised the discretion properly. It is submitted that findings have been rendered on the merits of the case also. In fact, the learned counsel for the respondent submitted that the appellants had produced an order before the learned Single Judge and certain observations have been made, that also only of a prima facie nature. The contention by the State is that by invoking Section 25B of the Kerala Value Added Tax, 2003, there is an extension of period for completing assessment. As regards this order also, it was held by the learned Single Judge that it is for the appellate authority to decide.

5. According to us none of the contentious issues between the parties have been decided by the learned Single Judge. Whether the order dated 24.3.2014 is in tune with Section 25B of the Act has also not been finally pronounced. It is well settled that when the discretionary jurisdiction under Article 226 has been exercised by the learned Single Judge unless the view taken is so perverse, the appellate

court will not interfere. The learned Government Pleader submits that great prejudice will be caused to the State if a blanket order of stay is granted. We are of the view that the learned Single Judge has granted a blanket order of stay only in the peculiar circumstances of the case and it cannot be said to be a matter where a generalised view has been taken. Thereby it will never prejudice the appellant also.

For all these reasons, we dismiss the appeal. The learned Single Judge has also held that the observations are only of a prima facie nature and will not bind the Appellate Authority. We also hold that the view taken by the learned Single Judge is only prima facie and the appellate authority will take appropriate decision untrammelled by the observations in the judgment

T.R.RAMACHANDRAN NAIR, JUDGE

K.P.JYOTHINDRANATH,JUDGE

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