IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THURSDAY, THE 12TH DAY OF NOVEMBER 2015/21ST KARTHIKA, 1937

WA.No. 2083 of 2015 () IN WP(C).7179/2014

AGAINST THE ORDER/JUDGMENT IN WP(C) 7179/2014 of HIGH COURT OF KERALA DATED 16-01-2015

APPELLANT(S)/RESPONDENTS IN THE W.P.(C):
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1. THE ASSISTANT COMMISSIONER, (SPECIAL CIRCLE-I), COMMERCIAL TAXES, KOZHIKODE.

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

3. THE COMMISSIONER, COMMERCIAL TAXES, THIRUVANANTHAPURAM.

4. THE STATE OF KERALA, REPRESENTED BY THE SECRETARY, TAXES DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.

BY SMT.SOBHA ANNAMMA EAPEN, SENIOR GOVERNMENT PLEADER

RESPONDENT(S)/PETITIONER IN W.P.(C):

MALABAR GOLD ORNAMENTS MAKERS (P) LTD.,
RAM MOHAN ROAD,
CALICUT. REPRESENTED BY DIRECTOR, MUJEEB RAHMAN M. 673 001.

R BY SRI.K.P.ABDUL AZEES

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 12-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

DG

THOTTATHIL B.RADHAKRISHNAN &
ANU SIVARAMAN, JJ.

W.A.No.2083 of 2015

Dated this the 12th day of November, 2015

J U D G M E N T

Thottathil B.Radhakrishnan, J.

1. Heard the learned Senior Government Pleader for the State Government and the learned counsel appearing for the respondent assessee.

2. What is in dispute is as to whether Exhibit P3 is a notice, which will fall under Rule 6(5) or Rule 6(7) of CST (Kerala) Rules, 1957. We say this because, while the learned single Judge has allowed the writ petition quashing the proposal contained in the impugned notice relying on the judgment of this Court in W.A.No.1018 of 2013, the State attempted to make out a case that the proposal in the notice was essentially one that falls under Rule 6(5) which relates to original assessment. Rule 6(7) relates to re-opening and re-assessment. We have examined Exhibit P3. It clearly states that since the Assistant Commissioner concluded that the transactions

mentioned therein are also to be included, the CST assessment for the year 2005-2006 is re-opened and is proposed to be completed under Section 9(2) of the CST Act read with Rule 6(5) of the Kerala Rules. It is a clear case of mis-quoting of the relevant provisions, since, what is proposed to be done is re-opening and re-assessment. That obviously falls specifically under Rule 6(7) and is governed by period of limitation, which would necessarily apply to the facts of the case in hand, as rightly noted by the learned single Judge. We record the submission that the judgment in W.A.No.1018 of 2013 is being challenged before the Apex Court and a Special Leave Petition has been instituted. We find no infirmity with the impugned judgment of the learned single Judge. This appeal, therefore, fails.

In the result, this writ appeal is dismissed.

Sd/-
(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

Sd/-
(ANU SIVARAMAN, JUDGE)

//TRUE COPY//

P.A TO JUDGE

DG