

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

TUESDAY, THE 31ST DAY OF JANUARY 2017/11TH MAGHA, 1938

WA.No. 196 of 2017 () IN WP(C).39518/2016

AGAINST THE ORDER/JUDGMENT IN WP(C) 39518/2016 of HIGH COURT OF
KERALA DATED 13-12-2016

APPELLANT(S)/PETITIONER:

SAMOD MOHAN
S/O.MOHANDAS,
PROPRIETOR OF PUTHIYARA TILES & SANITARIES,
PERUMBILLISSERY, CHERPU POST,
THRISSUR DISTRICT.

BY ADV. SRI.M.K.DILEEP KUMAR

RESPONDENT(S)/RESPONDENTS:

1. THE ASSISTANT COMMISSIONER (APPEALS)
DEPARTMENT OF COMMERCIAL TAXES,
POST POOTHOLE, THRISSUR DISTRICT,
PIN-680 004.
2. THE COMMERCIAL TAX OFFICER(2ND CIRCLE)
DEPARTMENT OF COMMERCIAL TAXES,
POST POOTHOLE, THRISSUR DISTRICT,
PIN-680 004.

BY ADV.MOHAMMED RAFIQ, SR.GOVERNMENT PLEADER

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 31-01-2017, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

jg-4/2

THOTTATHIL B.RADHAKRISHNAN &
DEVAN RAMACHANDRAN, JJ.

.....
W.A.No.196 of 2017
.....

Dated this the 31st day of January, 2017.

J U D G M E N T

Thottathil B.Radhakrishnan, J.

This writ appeal is against the judgment of the learned single Judge refusing to interfere with Ext.P5 order granted pending statutory appeal under the Kerala Value Added Tax Act, 2003. The direction through Ext.P5 was to remit 30% of the amount. That order was issued on 16.06.2014. The writ petition was filed some time towards the end of December, 2016. The learned single Judge held that there was no reason for this Court to entertain the writ petition which is ridden with laches and delay. Learned counsel for the appellant/petitioner pointed out that even in the writ petition there was specific pleading to the effect that his client was unaware of the decision taken on the stay petition by the statutory appellate authority. We have adverted to paragraph 3 of the writ petition. It is nothing but an attempt to put the blame either on the statutory

authority or on the tax consultant of the petitioner. There is also an attempt to say that even recovery proceedings were not pushed by the Governmental agencies obviously indicating that everyone were under the impression that there was an order of stay. We do not want to say anything about the recovery authorities not pressing for recovery. But one thing is certain. The learned single Judge has disbelieved the explanation given by the petitioner, and we see no cogent reason to interfere with the discretion exercised by the learned single Judge to refuse to entertain the writ petition. The writ appeal, therefore, fails and the same is accordingly dismissed.

After this judgment was dictated, holding that there is no merit in the writ appeal, we have considered the request of the learned counsel for the appellant for an opportunity to pay amounts to sustain the order of stay. The passage of time being reckoned, we direct that if 50% of the amount of tax demanded is paid within a period of three weeks, further recovery on the basis of the order impugned in the appeal pending before the statutory appellate

authority, will stand suspended till the final disposal of that appeal.
It is so ordered.

(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

(DEVAN RAMACHANDRAN, JUDGE)