IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THURSDAY, THE 20TH DAY OF OCTOBER 2016/28TH ASWINA, 1938

WA.No. 2031 of 2016 () IN WP(C).2159/2016

AGAINST THE ORDER/JUDGMENT IN WP(C) 2159/2016 of HIGH COURT OF KERALA DATED 26-08-2016

APPELLANT(S)/PETITIONER IN THE W.P.C:

HYGIENE SOLUTIONS
48/2565 C(1), MAMANGALAM-POTTAKUZHY ROAD,
NEAR KARUKAPPILLY JN., ELAMAKKARA, KOCHI - 26,
REPRESENTED BY ITS PARTNER, NOORUDIN R.J

BY ADVS.SRI.V.V.ASOKAN (SR.)
SRI.R.MURALIDHARAN (AROOR)

RESPONDENT(S)/RESPONDENTS IN THE W.P.(C):

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1. **THE COMMERCIAL TAX OFFICER**
   KVAT FIRST CIRCLE,
   DEPARTMENT OF COMMERCIAL TAXES,
   KALAMASSERY, COCHIN, PIN 682 030.

2. **THE INTELLIGENCE OFFICER (IB)**
   ERNAKULAM, DEPARTMENT OF COMMERCIAL TAXES,
   EDAPPALLY, KOCHI 24

BY ADV.MOHAMMED RAFIQ, SR.GOVERNMENT PLEADER

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 20-10-2016, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

jg-21/10

THOTTATHIL B.RADHAKRISHNAN &
DEVAN RAMACHANDRAN, JJ.

....

W.A.No.2031 of 2016

....

Dated this the 20th day of October, 2016.

JUDGMENT

Thottathil B.Radhakrishnan, J.

1. We have heard the learned Senior counsel for the appellant. We have also heard the learned Senior Government Pleader for the Department of Commercial Taxes.

2. The writ appeal is filed against the judgment of the learned single Judge refusing to interfere with penalty proceedings under the Kerala Value Added Tax Act, 2003, 'Act', for short.

3. The short issue that arises for decision is as to whether the learned single Judge had erred in writ jurisdiction by refusing to interfere with the impugned penalty proceedings for the reasoning that has been given by the learned single Judge in para 7 of the impugned judgment. Interpretation of Section 6(7)(b) of the Act came up for consideration of the learned single Judge. Dilating on the said provision, it has been held that cleaning materials, which are commodities which the appellant/petitioner has sold for consumption in Special

Economic Zone area, are not eligible to be treated as building materials, industrial inputs, plant and machinery or components, spares, tools and consumables in relation thereto, for the purpose of availing the benefit of exemption in terms of Section 6(7)(b) of the Act. We see no legal infirmity in the interpretation given by the learned single Judge. The writ appeal, therefore, fails on the fundamental issue raised.

Be that as it may, we have bestowed our anxious consideration to the question as to whether the authorities are justified in imposing penalty equal to double the amount of tax sought to be evaded. Weighing the different materials and factors and contentions raised by the appellant before the statutory authorities, we are of the view that ends of justice would be satisfied if the penalty is confined to the amount equivalent to the tax sought to be evaded, and we do so. Subject to this, this writ appeal is dismissed.

(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

(DEVAN RAMACHANDRAN, JUDGE)

jg-20/10