IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

THURSDAY, THE 30TH DAY OF JULY 2015/8TH SRAVANA, 1937

WA.No. 851 of 2009 ( ) IN WP(C).33731/2006

AGAINST THE ORDER/JUDGMENT IN WP(C) 33731/2006 of HIGH COURT OF KERALA DATED 08-01-2009

APPELLANT(S)/PETITIONER IN WP:

KARTHIKEYAN.T.K,
VISHNU MANA, C.M.C. 29, CHERTHALA P.O.
CHERTHALA, ALAPPUZHA.

BY ADV. SRI.N.R.CHANDRASEKHARAN

RESPONDENT(S)/RESPONDENTS IN WP:
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1. THE COMMISSIONER OF CENTRAL EXCISE & CUSTOMS
   CUSTOMS, OFFICE OF THE CALICUT COMMISSIONERATE
   MANACHIRA, CALICUT.

2. THE CUSTOMS, EXCISE AND SERVICE TAX
   APPELLATE TRIBUNAL, SNB, WPC BUILDING
   FKCCI COMPLEX, K.G.ROAD, BANGALORE.

3. M/S. INDIAN TELEPHONE INDUSTRIES LTD.,
   PALAKKAD, KERALA STATE.

4. DIRECTOR OF CENTRAL BUREAU OF
   INVESTIGATION, CBI HEAD QUARTERS, R.K.PURAM
   NEW DELHI.

R1 BY ADV. SRI.JOHN VARGHESE,SC,CEN.BOARD OF EXCISE
R4 BY ADV. SRI.M.V.S.NAMBOOTHIRY,SC, C.B.I.
R3 BY ADV. SRI.S.SUJIN
BY SRI.N.N.SUGUNAPALAN

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 30-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WA NO.851/2009

APPENDIX

APPELLANT'S EXHIBITS

ANNEXURE A: TRUE COPY OF THE JUDGMENT DT 30/9/2009 IN CONT.CASE NO.1076 OF 2009 BEFORE THE HON'BLE HIGH COURT OF KEALA.

RESPONDENTS' EXHIBITS

ANNEXURE R1(a): TRUE COPY OF THE MINUTES OF THE REWARD COMMITTEE DATED 20/5/09.

//True Copy//

PS to Judge

Rp

ASHOK BHUSHAN, C.J.
&
A.M. SHAFFIQUE, J.
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W.A. No. 851 of 2009
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Dated this, the 30th day of July, 2015

J U D G M E N T

<u>Shaffique, J.</u>

This appeal is filed by the writ petitioner challenging judgment dated 8/1/2009 in WP(C) No.33731/2006. The writ petition was filed *inter alia* seeking the following reliefs;

> *"(i) Call for the records leading to the issuance of Ext.P20 of the 2nd respondent and Ext.P32 of the 1st respondent and issue a writ of mandamus or any other appropriate writ, order or direction to the respondents 1 to 3 that Ext.P20 will not stand against the recovery of evaded excise duty admittedly to the tune of Rs.11.03 crores with the 3rd respondent from March, 1995 to August 1999 together with the interest and penalty etc. till its final realisation and hence Ext.P20 and P32 are void and liable to be set aside and quashed.*
>
> *(ii) to issue a writ of mandamus or any other appropriate writ, order or direction quashing Ext.P20 and P32.*
>
> *(iii) issue a writ of mandamus or any other appropriate writ, order or direction to the 1st respondent to pay 25% advance reward forthwith, to the petitioner in pursuance of the direction in*

Ext.P12 and read with Ext.P13 from the amount of Rs.1,00,00,000/- (Rupees one crore only) deposited by the 3rd respondent with the 1st respondent as also shown in Ext.P20.

(iv) issue a writ of mandamus or any other appropriate writ, order or direction to the 1st respondent to proceed with Ext.P5 information regarding evasion of excise duty and to recover the same in full as evaded excise duty from March 1995 to August 1999 from the 3rd respondent together with interest and penalties etc. in accordance with law, till its full and final recovery and realisation from the 3rd respondent.

(v) issue writ of mandamus or any other appropriate writ, order or direction to the 4th respondent (CBI) to conduct an investigation in the above case in order to find out the erring higher officers and persons who are responsible and found guilty in the case herein and to proceed against them in accordance with law".

2. The issue projected by the petitioner was regarding the order passed by the Customs, Excise & Service Tax Appellate Tribunal (for short 'CESTAT') with reference to the company M/s Indian Telephone Industries Limited. Petitioner was an employee of the said organization and he had given certain information

regarding violation of the statutory provisions, by which, according to him, the company was not paying the excise duty for certain items, which were being manufactured in the company. According to the petitioner, it is pursuant to the said information that the Excise Department had conducted enquiry and taken appropriate steps in the matter. However, petitioner was dissatisfied with the orders passed by CESTAT in so far as according to him, the entire evasion has not been brought to the notice of the authorities concerned and the enquiry was not satisfactory.

3. Learned Single Judge while considering the writ petition observed that the petitioner had no *locus standi* to challenge Ext.P20 and Ext.P32 orders as it was between the Excise Department and the company involved in the alleged violation. In regard to the claim of the petitioner for payment of award amount, no directions were issued by the learned Single Judge.

4. It is now brought to the notice of this Court by the

respondents that the petitioner had filed another wit petition as WP(C) No.26466/2003 in which a direction had been issued by the learned Single Judge as per judgment dated 13/1/2009 directing the Reward Committee to pass fresh orders on the basis of guidelines applicable and giving the reasons. This was based on the claim of the petitioner for the reward for bringing to the notice of the Excise Department regarding the alleged evasion. According to the petitioner, he was entitled to the reward in terms of the guidelines.

5. Respondent department in the counter affidavit filed in this writ appeal had produced the minutes of the Reward Committee made in respect of the informer, the appellant herein, in the meeting held on 20/5/2009. After evaluating the various issues involved in the matter and having found that the reward is only payment of an *ex-gratia* amount, allowed the claim of the petitioner for an amount of ₹5,00,000/-.

6. Learned counsel for the appellant submits that the reward has not been properly given to the petitioner and there

was no proper consideration of the actual evasion that had been brought to the notice of the Excise Department. Learned counsel refers to various factual issues involved in the alleged evasion and submits that crores of rupees had been evaded, which had not been taken note of by the Excise Department. It is apparent that the appellant has brought to the notice of the department regarding the evasion and on that basis enquiry had been conducted. Once the information had been given and the respondent authorities have proceeded with the enquiry, thereafter, the petitioner cannot have a say in the matter nor can the petitioner challenge the orders passed by the CESTAT or other competent authorities. In that view of the matter, the learned Single Judge was justified in forming an opinion that the petitioner has no locus standi in the matter.

7. As far as the reward is concerned, the Committee had gone into the claim of the petitioner and Annexure R1(a) minutes produced by the respondent authorities clearly indicates that the entire factual circumstances involved in the matter including the

fact that the petitioner was the informer, who has given necessary information regarding the evasion, was taken into consideration and it was found that, as per the guidelines, it is possible for the Department to grant an ex-gratia payment and ₹5,00,000/- was fixed as the ex-gratia amount. Under such circumstances, we do not think that we will be justified in interfering with the said finding of the Committee at this stage of the proceedings.

Having regard to the aforesaid factual situation, we do not think that the appellant has made out any ground to interfere with the judgment of the learned Single Judge by exercising the appellate jurisdiction. Accordingly, this writ appeal is dismissed.

Sd/-
ASHOK BHUSHAN, CHIEF JUSTICE

Sd/-
A.M. SHAFFIQUE, JUDGE

Rp

//True Copy//

PS to Judge