IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:
THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

TUESDAY, THE 24TH DAY OF MARCH 2015/3RD CHAITHRA, 1937

WA.No. 698 of 2015 () IN WP(C).22714/2014

APPELLANT/PETITIONER:

M/S. INDO ASIAN NEWS CHANNEL PRIVATE LIMITED,
A REPORT STUDIO COMPLEX, HMT COLONY (P.O)
ERNAKULAM-683 503
REPRESENTED BY ITS MANAGING DIRECTOR M.V.NIKESH KUMAR.

BY ADV. SRI.K.A.SALIL NARAYANAN

RESPONDENT(S)/RESPONDENTS:
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1. UNION OF INDIA
REPRESENTED BY ITS SECRETARY, MINISTRY OF FINANCE
DEPARTMENT OF REVENUE, NORTH BLOCK, NEW DELHI-110 001.

2. THE COMMISSIONER OF CENTRAL EXCISE
CUSTOMS AND SERVICE TAX, C.R.BUIDLING, I.S. PRESS ROAD
COCHIN-682 018.

3. THE DEPUTY COMMISSIONER (PREVENTIVE)
OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE
CUSTOMS AND SERVICE TAX, C.R.BUIDLING, I.S. PRESS ROAD
COCHIN-682 018.

4. M/S.SOUTH INDIAN BANK
BANERJI ROAD COCHIN-682 018.

5. M/S.STATE BANK OF INDIA
KALAMASSERY BRANCH, WOODLANDS BUILDING
NEAR APOLLO TYRES, KAMALASSERY, ERNAKULAM-683 104.

R1-R3 BY ADV. SRI.THOMAS MATHEW NELLIMOOTTIL, SC, CENTRAL EXCISE
SRI.R.S.KALKURA, SC, SBI
SRI.K.K.JOHN, SC, SOUTH INDIAN BANK

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 24-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.

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W.A.No. 698 of 2015

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Dated this the 24th day of March, 2015

J U D G M E N T

ANTONY DOMINIC, J.:

This appeal is filed against the judgment in W.P.(C).No. 22714/2014. The said Writ Petition was filed challenging the recovery proceedings for realising the service tax that is due from them. By the judgment under appeal, the learned Single Judge declined to interfere with the recovery proceedings, but granted an instalment facility to the appellant. We are informed that subsequently, on an application for review, by order dated 12.11.2014, the schedule fixed in the judgment was modified. In spite of it, default was committed in the payment of three instalments. It is thereafter that this appeal was filed challenging the judgment of the learned Single Judge, with an application for condonation of delay of 174 days in filing the appeal. Yesterday, when the matter came up for consideration before this Court, considering the submission made by the learned counsel for the appellant that its managing director has been taken into custody, this Court passed the following order:

> "Heard the counsel for the appellant. Standing Counsel for R1 to R3 and the counsel appearing for the bank.
>
> Even according to the appellant, the instalments that were due from the appellant which were payable on 4.1.15, 4.2.15 and 4.3.15 are in default. The appellant expresses his unconditional willingness to clear those amounts also. In such circumstances, we direct the appellant to remit rupees ninety lakhs today itself. It is ordered that if the payment is tendered by the appellant, respondents 1 to 3 will accept the same and release the appellant who is stated to be taken into custody for non-compliance with the directions of this Court.
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> Call this case tomorrow (24.3.2015) at 1.45 p.m. Standing counsel for respondents 1 to 3 will obtain instructions and submit whether towards the aforementioned instalments, any further amounts are due from the appellant. It is made clear that in case any further amount is due, the appellant will pay such further amounts also."

2. It is, as ordered in the above order, that this appeal is coming up today for consideration. Today when the matter was taken up, the counsel for the appellant submitted that before moving the appeal, the Managing Director of the company was arrested and produced before the Additional Chief Judicial Magistrate's Court (Economic Offences), Ernakulam and that the said court passed an order releasing him on bail subject to remittance of rupees one crore twelve lakhs. It is stated that the said condition has been complied with and that he has been enlarged on bail. The counsel also stated that the learned Magistrate has ordered that a further payment of Rs.38 lakhs shall be made on or before

31.7.2015. In view of such an order that has been passed, the order dated 23.3.2015 passed by this Court was unnecessary and therefore, we recall the above interim order.

3. Turning to the merits of the appeal, as we have already stated, in the Writ Petition, only the recovery action was challenged. This therefore means that there is an admitted liability for payment of service tax, which is quantified on the basis of the returns filed by the appellant itself. In such a situation, the maximum that the appellant could have aspired from this Court was an instalment facility, which has been granted by the learned Single Judge. We, therefore, cannot find any fault with the view taken by the learned Single Judge. Accordingly, the appeal is dismissed.

Sd/-
ANTONY DOMINIC, JUDGE

Sd/-
sdk+ ALEXANDER THOMAS, JUDGE

///True copy///

P.S. to Judge