

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR.JUSTICE K.HARILAL**

WEDNESDAY, THE 1ST DAY OF APRIL 2015/11TH CHAITHRA, 1937

WA.NO. 777 OF 2015

**AGAINST THE JUDGMENT IN WP(C) 7961/2015 OF HIGH COURT OF KERALA
DATED 25.3.2015**
.....

APPELLANT/PETITIONER:

**SUNILKUMAR, AGED 49 YEARS,
S/O. SUBRAMANIAM, PROPRIETOR, YESKAY CONSTRUCTIONS,
SREE MURUGA BUILDING, KALOOR, COCHIN -682 017.**

**BY ADVS.SRI.C.S.GOPALAKRISHNAN NAIR
SMT.CHANDINI G.NAIR**

RESPONDENT(S)/RESPONDENTS:

- 1. UNION OF INDIA,
REPRESENTED BY ITS SECRETARY, DEPARTMENT OF REVENUE,
NORTH BLOCK, NEW DELHI -110 001.**
- 2. COMMSSIONER OF CENTRAL EXCISE CUSTOMS AND SERVICE TAX,
CENTRAL REVENUE BUILDINGS, I.S. PRESS ROAD,
COCHIN - 682 018.**
- 3. DEPUTY COMMISSIONER OF CENTRAL EXCISE,
SERVICE TAX DIVISION, CENTRAL EXCISE BHAVAN,
KATHRIKADAVU, COCHIN - 682 017.**
- 4. SUPERINTENDENT OF CENTRAL EXCISE,
SERVICE TAX, E-RANGE, CENTRAL EXCISE BHAVAN,
KATHRIKADAVU, COCHIN - 682 017.**

BY SRI.RANJIT J. KOSHY,SC, CUSTOMS & CENTRAL EXCISE

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 01-04-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

OKB

THOTTATHIL B. RADHAKRISHNAN & K. HARILAL, JJ.

Writ Appeal No.777 of 2015

Dated this the 1st day of April, 2015.

JUDGMENT

Thottathil B. Radhakrishnan, J.

1. We have heard the learned counsel for the appellant and the learned counsel for the Revenue.
2. This appeal is against the judgment by which the learned single Judge refused to interfere with garnishee proceedings initiated for recovery of service tax which is admittedly due from the petitioner. The liability is not disputed. The arrear is admitted. Obviously, therefore, the garnishee proceedings cannot be found faulty.
3. The learned counsel for the appellant argued that in the practical aspect of things, if the appellant is permitted to utilise the funds of two or three transactions by lifting the garnishee order as against those institutions, he would be able to generate the funds and satisfy the arrear as well. We are unable to take

it that such a plea can be considered by us in writ jurisdiction. It is a matter within the domain of the recovering authority to consider whether any leniency or allowance in that regard is to be shown. That cannot be ordered by the writ court. We do not see any illegality or error of jurisdiction committed by the learned single Judge while dismissing the writ petition. The writ appeal, therefore, fails.

In the result, this writ appeal is dismissed.

Sd/-
THOTTATHIL B. RADHAKRISHNAN, JUDGE

Sd/-
K. HARILAL, JUDGE

okb.