IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 4TH DAY OF MARCH 2015/13TH PHALGUNA, 1936

WP(C).No. 4616 of 2015 (B)

PETITIONER :

M/S. MUTHOOT FINANCE LIMITED.,
MUTHOOT CHAMBERS, BANERJI ROAD, COCHIN-682 018,
REPRESENTRED BY ITS AUTHORIZED SIGNATORY,
MR. MANOJ JACOB.

BY ADV. SRI.JOSE JACOB

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

2. **COMMISSIONER OF CENTRAL EXCISE,**
   CUSTOMS AND SERVICE TAX,
   OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE,
   CUSTOMS AND SERVICE TAX,C.R.BUILDING,
   I.S.PRESS ROAD, KOCHI-682 018.

R1 & R2 BY ADV. SRI.THOMAS MATHEW NELLIMOOTTIL,SC,CB EXCISE

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 04-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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WP(C).No. 4616 of 2015 (B)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: TRUE COPY OF THE AGREEMENT DATED 20.12.2010.

EXHIBTI P2: TRUE COPY OF SHOW CAUSE NOTICE NO.194/2012/ST DATED 22.10.2012.

EXHIBIT P3: TRUE COPY OF REPLY DATED 19.2.2013.

EXHIBIT P4: TRUE COPY OF SHOW CAUSE NOTICE NO.177/2014/ST DATED 21/05/2014

EXHIBIT P5: TRUE COPY OF REPLY DATED 15.7.2014.

EXHIBIT P6: TRUE COPY OF ORDER DATED 31.12.2014.

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.A.TO.JUDGE

sts

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C).No.4616 of 2015

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Dated this the 4th day of March, 2015

<u>J U D G M E N T</u>

The challenge in the writ petition is against Ext.P6 order of the 2nd respondent whereby the 2nd respondent has confirmed a demand of service tax and penalty on the petitioner. The limited ground raised in the writ petition, in its challenge against Ext.P6 order, is that the issue involved, with regard to the liability to service tax of the petitioner, who was an agent of M/s.Paul Merchant Limited, and engaged in the provision of services of money transfer on behalf of Western Union, a Company having its operations outside the territory of India, had already been decided in favour of an assessee, similarly situated as the petitioner, by a three member Bench of the CESTAT in the decision reported in **<u>Paul Merchants Ltd. v. Commissioner of C.EX., Chandigarh [2013 (29) S.T.R 257 (Tri.-Del.)],</u>** and hence, it was not open to the 2nd respondent Commissioner to ignore the said binding decision of the Tribunal and confirm the demand of service tax on the petitioner. Counsel for the petitioner would, in particular, point to paragraph 28, 29 and 30 of Ext.P6 order of the 2nd respondent to contend that the 2nd respondent, other than referring to the decision of the appellate Tribunal in **M/s.Paul Merchant's case,** does not expressly state how, the facts of the petitioner's case are different from those that obtained in the case of **M/s.Paul Merchant Limited** that was decided by the Larger Bench of the Appellate Tribunal. It is his specific contention, that in as much as the 2nd respondent was bound by the decision of the Larger Bench of the Appellate Tribunal, it was not open to the 2nd respondent to confirm the demand against the petitioner by overlooking the decision of the Appellate Tribunal. In short, the contention of the petitioner is that, the 2nd respondent was governed by the principles of judicial discipline, and was bound to follow the order of the Larger Bench of the Appellate Tribunal, unless the 2nd respondent found the facts of the petitioner's case distinguishable from the facts of the case decided by the larger bench of the Appellate Tribunal.

2. I have heard Sri.Jose Jacob, the learned counsel for the petitioner and Sri.Thomas Mathew Nellimoottil, the learned Standing counsel for the respondents.

3. On a consideration of the facts and circumstances of the

case as also the submissions made across the bar, I find force in the contention of the petitioner, that the 2nd respondent in Ext.P6 order, has not highlighted any point of distinction between the facts of the petitioners case, and the facts that were considered by the Larger Bench of the Appellate Tribunal, while deciding the issue in favour of the assessee in the decision reported in **Paul Merchants Ltd. v. Commissioner of C.EX., Chandigarh [2013 (29) S.T.R 257 (Tri.-Del.)]**. In my view, when an assessee cites a decision of the Larger Bench of the Appellate Tribunal, before the adjudicating authority under the Finance Act, 1994, as amended, it will be incumbent upon the adjudicating authority to follow the decision of the Larger Bench of the Tribunal, unless the factual situation in the case before the adjudicating authority calls for a different interpretation. Inasmuch as in Ext.P6 order, the 2nd respondent has not pointed to any distinguishing feature in the case of the petitioner, as would distinguish it from the case decided by the Larger Bench of the Tribunal, I am of the view that, the 2nd respondent must be directed to reconsider the matter in the light of the observations made in this judgment. Accordingly, I quash Ext.P6 order and direct the 2nd respondent to consider the matter afresh, and pass fresh orders within a period of two months from the date of receipt of a copy of the judgment, after hearing the petitioner and taking note of the observations in this judgment.

The Writ petition is disposed as above.

A.K.JAYASANKARAN NAMBIAR
JUDGE

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