

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 20TH DAY OF FEBRUARY 2015/1ST PHALGUNA, 1936

WP(C).No. 4721 of 2015 (M)

PETITIONER(S) :

**GLOBAL UNITED SHIPPING INDIA PRIVATE LIMITED,
6TH FLOOR, ARAYBHANGI PINNACLE, KADAVATHRA,
ERNAKULAM, REPRESENTED BY ITS LEGAL MANAGER,
PROMY GANGADHARAN, AGED 40 YEARS, S/O.GANGADHARAN,
LEGAL MANAGER, GLOBAL UNITED SHIPPING INDIA PVT.LTD.,
ARAYBHANGI PINNACLE, KADAVATHRA, ERNAKULAM.**

**BY ADVS.SRI.SUNIL NAIR PALAKKAT
SRI.K.N.ABHILASH**

RESPONDENT(S) :

- 1. THE DEPUTY COMMISSIONER,
SERVICE TAX DIVISION, CENTRAL EXCISE BHAVAN,
KATHRIKADAV, COCHIN - 682 017.**
- 2. DEPUTY COMMISSIONER OF CUSTOMS (REFUNDS),
OFFICE OF THE COMMISSIONER OF CUSTOMS (PORT-EXPORT),
CUSTOM HOUSE, NO. 60, RAJAJI SALAI, CHENNAI - 600 001.**

BY ADV. SRI. THOMAS MATHEW NELLIMOOTTIL, S.C

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 20-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1: THE TRUE COPY OF THE ORDER IN APPEAL C CUS.NO. 949/2012
DATED 22/08/2012 PASSED BY THE COMMISSIONER OF CUSTOMS
(APPEALS), CHENNAI.**
- EXT.P2: THE TRUE COPY OF THE ORDER NO. 29245/2014 DATED 04/09/2014
ISSUED BY THE 2ND RESPONDENT.**
- EXT.P3: A COPY OF THE SAID RECTIFICATION APPLICATION DATED 08/10/2014
FILED BEFORE THE 2ND RESPONDENT.**
- EXT.P4: A COPY OF THE REQUEST LETTER DATED FILED BEFORE
THE 1ST RESPONDENT 08/10/2014.**
- EXT.P5: A COPY OF THE ABOVE SAID REMINDER LETTER DATED 03/12/2014
SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.**

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C) No.4721 of 2015 (M)

.....
Dated this the 20th day of February, 2015

JUDGMENT

The challenge in the writ petition is against Ext.P2 order passed by the 2nd respondent in a refund application that was preferred by the petitioner before him.

2. In the writ petition, the challenge against Ext.P2 order is essentially that the said order was passed by the 2nd respondent by relying on a letter that was obtained by the said respondent from the 1st respondent, a copy of which was not shown to the petitioner before passing Ext.P2 order.
3. When the matter came up for admission, I had called for a copy of the said letter from the learned counsel appearing for the respondent. He has produced a copy of the said letter in Court today. On a perusal of the same, I find that the said letter only forwards a copy of the returns, furnished by the assessee to the department, to the 2nd respondent, who was adjudicating the re-fund application. In that sense, therefore, I do not see any prejudice caused to the petitioner, on account of the reliance by the 2nd respondent on the letter furnished to him by the 1st respondent.
4. Inasmuch as the challenge of the petitioner is against the correctness of the Ext.P2 order, to the extent it rejects the application filed by the

petitioner for refund of Customs duty, I am of the view that the remedy of the petitioner lies in approaching the appellate authority under the Customs Act, 1962, in a duly constituted appeal against Ext.P2 order. There is no scope for any interference with Ext.P2 order in these proceedings under Article 226 of the Constitution of India. Accordingly, leaving it open to the petitioner to prefer an appeal against Ext.P2 order before the Commissioner of Customs, Appeals, Chennai, I dispose the writ petition in its challenge against Ext.P2 order.

5. I note from Ext.P2 order that, the said order was despatched to the petitioner on 16.09.2014. On computing the period, including the condonable period of limitation, for filing the appeal before the appellate authority, I make it clear that, if the petitioner prefers an appeal against Ext.P2 order, after complying with the procedural formalities connected therewith, within a period of one month from today, the appellate authority shall treat the appeal as validly filed and consider the same on merits, after hearing the petitioner.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

AMV/20/02/