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. 4958 of 2015 (T)

PETITIONER(S):

SONI REBERIO,
PROPERIETOR, ESSAR COMMUNICATION, 35/39,
N.H. BYPASS, PALARIVATTOM, ERNAKULAM,
PIN-682 028.

BY ADV. SRI.MOHAMMED RAFIQ

RESPONDENT(S):

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1. THE ADDITIONAL COMMISSIONER OF CENTRAL EXCISE AND CUSTOMS, COCHIN COMMISSIONERATE , I.S. PRESS ROAD, ERNAKULAM, PIN-682 018.

2. THE DEPUTY COMMISSIONER (ADJ) OF CENTRAL EXCISE & CUSTOMS, COCHIN COMMISSIONERATE , I S PRESS ROAD, ERNAKULAM, PIN-682 018.

3. THE DEPUTY COMMISSIONER OF CENTRAL EXCISE, SERVICE TAX DIVISION, CENTRAL EXCISE BHAVAN, KATHRIKADAVU, ERNAKULAM, PIN-682 017.

4. THE UNION OF INDIA, REPRESENTED BY THE SECRETARY, MINISTRY OF FINANCE, DEPARTMENT OF REVENUE, NEW DELHI-PIN-110 001.

BY ADVS. SRI.TOJAN J.VATHIKULAM, SC
SRI.THOMAS MATHEW NELLIMOOTTIL, SC

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

msv/

WP(C).No. 4958 of 2015 (T)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT. P1:-THE TRUE COPY OF THE ASSESSMENT ORDER NO 3154/2012/ST DTD 23/8/2012 PASSED ISSUED BY THE IST RESPONDENT.

EXT. P2:-THE TRUE COPY OF THE JUDGMENT OF THE HON'BLE HIGH COURT OF KERALA DTD 5/11/2013 IN WPC NO 26578/2013.

EXT. P3:-THE TRUE COPY OF THE ORDER C NO IV/4/16/2013 ST DTD 27/11/2013 PASSED BY THE ASSISTANT COMMISSIONER OF CENTRAL EXCISE.

EXT. P4:-THE TRUE COPY OF THE JUDGMENT OF THE HON'BLE COURT OF KERALA DTD 28/5/2014 IN WPC NO 30370 OF 2013.

EXT. P5:-THE TRUE COPY OF THE APPLICATION FOR RECTIFICATION DTD 19/8/2014 SUBMITTED BY BEFORE THE IST RESPONDENT.

EXT. P6:-THE TRUE COPY OF THE E-RECEIPT DTD 30/1/2014 EVIDENCING SERVICE TAX THROUGH AXIS BANK.

EXT. P7:-THE TRUE COPY OF THE TAX PAYER'S COUNTER FOIL DTD 30/1/2014 ISSUED BY THE HDFC BANK.

EXT. P8:-THE TRUE COPY OF THE E-RECEIPT FOR CENTRAL SERVICE TAX PAYMENTS DTD 30/6/2014 ISSUED BY THE STATE BANK OF TRAVANCORE.

EXT. P9:-THE TRUE COPY OF THE E-RECEIPT FOR CENTRAL SERVICE TAX PAYMENTS DTD 31/7/2014 ISSUED BY THE STATE BANK OF TRAVANCORE.

EXT. P10:-TRUE COPY OF THE ORDER NO C NO V/ST/15/165/10/ST ADJ DTD 7/10/2014 ISSUED BY THE 2ND RESPONDENT.

EXT. P11:-TRUE COPY OF THE NOTICE NO C NO IV/04/16/2013-ST 3855/14 DTD 11/12/2014 ISSUED BY THE 3RD RESPONDENT UNDER SECTION 87(B)(I)OF THE FINANCE ACT 1994.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Ms**v/**

A.K.JAYASANKARAN NAMBIAR, J.

...

W.P.(C) No.4958 of 2015 (T)

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Dated this the 20th day of February, 2015

JUDGMENT

The challenge in the writ petition is against Exts.P10 and P11 orders, that have been passed by the 2nd and 3rd respondents respectively.

2. The facts in the writ petition would disclose that, aggrieved by certain factual mistakes that crept into Ext.P1 order, the petitioner had approached the 1st respondent with a rectification application for correcting the said mistakes. The 1st respondent, apparently, heard the petitioner in the rectification application. There was no order forthcoming, however, from the 1st respondent but instead, the petitioner received Ext.P10 communication from the 2nd respondent stating that the rectification application had been rejected. Subsequent to Ext.P10 communication, the petitioner was also served with Ext.P11 garnishee notice by the 3rd respondent.

3. In the writ petition, the challenge against Ext.P10 communication is essentially on the ground that, the said communication is issued by a person who was not competent to pass an order in the rectification application as the said application was not pending before her for consideration.

4. I have heard Sri.Mohammed Rafiq, learned counsel for the petitioner and Sri.Tojan J.Vathikulam, learned Standing counsel for the respondents.

5. On a consideration of the facts and circumstances of the case and also the submissions made across the Bar, I find that the rectification application preferred by the petitioner, sought for rectification of certain mistakes that had crept into Ext.P1 order, that was passed by the 1st respondent. In that view of the matter, the orders to be passed in the rectification application had to be by 1st respondent and not by the 2nd respondent. Although, the learned counsel for the respondent would submit that Ext.P10 is only a communication given by the 2nd respondent, as regards the decision arrived at by the 1st respondent, there is nothing in Ext.P10 that would suggest that there was a decision already arrived at by the 1st respondent. Be that as it may, I am of the view that it was not open to the 1st respondent to abdicate his duty to pass an order in the rectification application. I, therefore, quash Exts.P10 and P11 and direct the 1st respondent to consider the rectification application submitted by the petitioner afresh and on merits, after hearing the petitioner. I make it clear that, it will be open to the petitioner to produce additional materials to substantiate his contentions on merits. The 1st respondent shall pass orders in

the rectification application, within a period of two months from the date of receipt of a copy of this judgment.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

AMV/20/02/