IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 6TH DAY OF MARCH 2015/15TH PHALGUNA, 1936

WP(C).No. 5360 of 2015 (T)

PETITIONER(S):

M/S. ST.MARY'S HOTELS PVT LTD.,
THE WINDSOR CASTLE, M.C.ROAD, NATTAKAM,
KOTTAYAM - 686 039,
REPRESENTED BY ITS MANAGING DIRECTOR SRI.T.O.ABRAHAM.

BY ADVS.DR.K.P.PRADEEP
SRI.T.T.BIJU
SMT.T.THASMI.

RESPONDENT(S):

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

2. THE DEPUTY COMMISSIONER OF CENTRAL EXCISE (SERVICE TAX), CENTRAL EXCISE, CUSTOMS AND SERVICE TAX, KOTTAYAM DIVISION - SREENIVASA IYER ROAD, KOTTAYAM.

3. THE SUPERINTENDENT OF CENTRAL EXCISE, SERVICE TAX RANGE, KOTTAYAM, KOTTAYAM.

4. THE UNION OF INDIA, REPRESENTED BY THE SECRETARY, MINISTRY OF FINANCE, SOUTH BLOCK, NEW DELHI - 110 001.

BY SRI.JOHN VARGHESE, SC, CEN.BOARD OF EXCISE.
BY SRI.THOMAS MATHEW NELLIMOOTTIL, SC, CB EXCISE.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 06-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rvs.

APPENDIX

PETITIONER(S)' EXHIBITS :

EXT.P1: **TRUE CPY OF THE DECLARATION IN FORM VCES-I FILED ON 13-12-2013 BEFORE THE DESIGNATED AUTHORITY - THE DEPUTY COMMISSIONER OF CENTRAL EXCISE, KOTTAYAM DIVISION, KOTTAYAM - 1.**

EXT.P2: **TRUE COPY OF THE ACKNOWLEDGEMENT DATED 18-12-2013 IN FORM VCES-2 SIGNED BY THE DEPUTY COMMISSIONER, CUSTOMS, CENTRAL EXCISE AND SERVICE TAX, KOTTAYAM.**

EXT.P3: **TRUE COPY OF THE DISCHARGE CERTIFICATE DATED 24-11-2014 IN FORM VCES-3 SIGNED BY THE ASSISTANT COMMISSIONER, CENTRAL EXCISE, KOTTAYAM.**

EXT.P4: **TRUE COPY OF THE SHOW CAUSE NOTICE NO.318/2014/ST DATED 11-12-2014 ISSUED BY THE 1ST RESPONDENT.**

EXT.P5: **TRUE COPY OF THE SHOW CAUSE NOTICE NO.193/2013 ST DATED 15-10-2013 ISSUED BY THE 1ST RESPONDENT.**

EXT.P6: **TRUE COPY OF THE AUDIT REPORT AR NO.167/ST/13-14/12474 DT.07/10/2013 ISSUED BY THE ASSISTANT COMMISSIONER, OFFICE OF THE COMMISSIONER, CENTRAL EXCISE, KOCHI.**

EXT.P7: **TRUE COPY OF THE REPLY TO SHOW CAUSE NOTICE NO.193/2013 ST FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT ON 26-11-2013.**

EXT.P8: **TRUE COPY OF THE LETTER DATED 22/7/2014 ISSUED BY THE 1ST RESPONDENT'S OFFICE, INTIMATING THE DATE OF PERSONAL HEARING.**

EXT.P9: **TRUE COPY OF THE WRITTEN SUBMISSION FILED BEFORE THE 1ST RESPONDENT AT THE TIME OF PERSONAL HEARING ON 12/08/2014.**

RESPONDENT(S)' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.5360 OF 2015 (T)

Dated this the 6th day of March, 2015

J U D G M E N T

The challenge in the writ petition is against Exts.P4 and P5 show cause notices that have been issued to the petitioner in connection with the demand of service tax, interest and penalty. While Ext.P4 show cause notice has been issued to the petitioner, pursuant to a declaration that was made by the petitioner in terms of the Voluntary Compliance Encouragement Scheme, 2013 (VCES). Ext.P5 is the show cause notice that is issued demanding differential tax and interest from the petitioner for the period from 1.4.2008 to 31.3.2013. It is pointed out by counsel for the petitioner that Ext.P5 show cause notice has been issued based on Ext.P6 final audit report of the Central Excise Department. The grievance of the petitioner against Exts.P4 and P5, broadly stated, is that, while in Ext.P4 show cause notice, the proposal of the respondents is to reject the application filed by the petitioner in terms of the VECS scheme, on the ground that the declaration filed by him is substantially wrong, the said show cause notice also proposes to demand differential tax, interest and penalty for the period from 2008 to 2013, in respect of which, according to the petitioner, there is already Ext.P5 show cause notice that has been issued to him. It is the contention of the petitioner that, as per the VCES scheme, the respondents can only reject the application preferred by the petitioner under the said scheme, if they find that the declaration submitted by the petitioner is substantially wrong. It is his case that under the VCES scheme, the respondents cannot go further and make a demand for a period which was not covered by the declaration submitted by the petitioner. As regards the demand in Ext.P5 show cause notice, it is the case of the petitioner that he has already submitted a reply to Ext.P5 show cause notice and he has also attended the personal hearing in connection with the adjudication proceedings. The challenge in the writ petition however is on the issue of jurisdiction of the respondents to issue Exts.P4 and P5 show cause notices.

2. I have heard Sri.K.P.Pradeep, the learned counsel appearing for the petitioner as also Sri.John Varghese, the learned Standing counsel appearing for the respondents.

On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I find that as regards the demand of differential service tax for the period from 2008-09 to 2012-13 is concerned, there is already Ext.P5 show cause notice that has been issued to the petitioner demanding the differential tax, and hence the apprehension of the petitioner that, for the same demand, the respondents would proceed against him through Ext.P4 show cause notice also appears to be misconceived. As regards the contentions of the petitioner with regard to Ext.P4 show cause notice, I am of the view that the point urged by counsel for the petitioner, as regards the period for which the petitioner can be proceeded against in respect of the declaration already filed by him under the VCES scheme, is one that would have to engage the attention of the adjudicating authority. I do not see any reason to go into the said issue in these proceedings under Article 226 of the Constitution of India. Thus, without pronouncing on the merits of the case, I relegate the petitioner to the alternate remedy of preferring a reply to Exts.P4 and P5 show cause notices, and getting the matter adjudicated before the authorities under the Act. The writ petition, in its challenge against Exts.P4 and P5 show cause notices is dismissed as not maintainable. The petitioner is free to raise all issues, legal and factual, before the authorities in response to Exts.P4 and P5 show cause notices.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp