IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 23RD DAY OF FEBRUARY 2015/4TH PHALGUNA, 1936

WP(C).No.5712 of 2015 (L)

PETITIONER:

NIKUNJAM CONSTRUCTIONS (P) LTD.,
A COMPANY INCORPORATED UNDER THE COMPANIES ACT HAVING
ITS REGISTERED OFFICE AT T.C 4/2554-3,
INDRAPRASTHAM PATTOM-KOWDIAR ROAD,PATTOM P,O,
TRIVANDRUM-695 004,REP. BY ITS MANAGING DIRECTOR.

BY ADVS.SRI.R.S.KALKURA
SRI.M.S.KALESH
SRI.HARISH GOPINATH
SMT.R.BINDU
SRI.GENS GEORGE ELAVINAMANNIL

RESPONDENTS:
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1. THE UNION OF INDIA,REP. BY ITS SECRETARY,
DEPARTMENT OF REVENUE,
CENTRAL EXCISE AND CUSTOMS,
CENTRAL SECRETARIAT,NEW DELHI-110 001.

2. THE JOINT COMMISSIONER,
SERVICE TAX DIVISION,
OFFICE OF THE COMMISSIONER OF
CENTRAL EXCISE AND CUSTOMS,
TC NO.26/334,PRESS CLUB ROAD,ICE BHAVAN,
THIRUVANANTHAPURAM-695 001.

3. THE COMMISSIONER OF CENTRAL EXCISE (APPEALS),
OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE,
CUSTOMS AND SERVICE TAX (APPEALS),
OFFICE OF THE CHIEF COMMISSIONER OF CENTRAL EXCISE,
COCHIN ZONE,C.R.BUILDINGS,I.S.PRESS ROAD,
COCHIN-682018.

4. THE COMMISSIONER OF CENTRAL EXCISE,
CUSTOMS AND SERVICE TAX,
OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE,
CUSTOMS AND SERVICE TAX (APPEALS),
OFFICE OF THE CHIEF COMMISSIONER OF CENTRAL EXCISE,
COCHIN ZONE,C.R.BUILDINGS,I.S.PRESS ROAD,
COCHIN-682018.

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WP(C).No.5712 of 2015 (L)
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5. THE SUPERINTENDENT,SERVICE TAX (GROUP B),
OFFICE OF THE SUPERINTENDENT,
CENTRAL EXCISE,SERVICE TAX (GROUP B),
3RD FLOOR,ICE BHAVAN,PRESS CLUB ROAD,
THIRUVANANTHAPURAM-695 001.

R1 -R5 BY SRI.THOMAS MATHEW NELLIMOOTTIL,SC,CB EXCISE

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 23-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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WP(C).No.5712 of 2015 (L)

APPENDIX

PETITIONER'S EXHIBITS:

EXT P1:TRUE COPY OF THE NOTICE NO.37/2010 WITH NO.C.NO.IV/16/25/2010/ST-ADJ. DATED 20-04-2010 ISSUED BY THE SECOND RESPONDENT TO THE PETITIONER.

EXT P2:TRUE COPY OF THE OBJECTION TO THE SHOW CAUSE NOTICE DATED 24-05-2010 SUBMITTED BY THE PETITIONER BEFORE THE SECOND RESPONDENT.

EXT P3:TRUE COPY OF THE ORDER BEARING NO.70/2011-ST(ADC) DATED 30-11-2011 ISSUED BY THE SECOND RESPONDENT.

EXT P4:TRUE COPY OF THE MEMORANDUM OF APPEAL ALONG WITH AN APPLICATION FOR STAY AND PRE DEPOSIT WAIVER IN THE PRESCRIBED FORM DATED 14-03-2012 SUBMITTED BY THE PETITIONER BEFORE THE THIRD RESPONDENT.

EXT P5:TRUE COPY OF THE NOTICE DATED 06-02-2015 ISSUED BY THE 5TH RESPONDENT TO THE PETITIONER.

EXT P6:TRUE COPY OF THE COMMUNICATION DATED 13-02-2015 ISSUED BY THE FIFTH RESPONDENT TO THE PETITIONER.

EXT P7:TRUE COPY OF THE REPLY DATED 14-02-2015 ISSUED BY THE PETITIONER TO THE FIFTH RESPONDENT.

EXT P8:TRUE COPY OF THE LETTER DATED 16-02-2015 ISSUED BY THE FIFTH RESPONDENT TO THE PETITIONER.

RESPONDENT'S EXHIBITS: NIL

//TRUE COPY//

P.S. TO JUDGE

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A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C).No.5712 of 2015

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Dated this the 23rd day of February, 2015

JUDGMENT

Against Ext.P3 order of the 2nd respondent confirming a demand of service tax and penalty on the petitioner, the petitioner had preferred Ext.P4 appeal and stay petition before the 3rd respondent appellate authority. The grievance of the petitioner in the writ petition is that even before considering the stay petition, recovery steps have been initiated by the respondents to recover the amounts confirmed against the petitioner by Ext.P3 order.

2. I have heard Sri.R.S.Kalkura, the learned counsel for the petitioner and Sri.Thomas Mathew Nellimoottil, the learned Standing counsel for Central Board of Excise and customs.

On a consideration of the facts and circumstances of the case as also the submissions made across the Bar, I dispose the writ petition with the following directions:

i. The 3rd respondent shall consider and pass orders on the stay petition within a period of two months from the date of receipt of a copy of this judgment, after hearing the petitioner.

ii. Recovery steps for recovery of amounts confirmed against petitioner by Ext.P3 order shall be kept in abeyance till orders are passed by the 3rd respondent as directed above and communicated to the petitioner.

iii. The order to be passed by the 3rd respondent shall be a reasoned one adverting to the contentions of the petitioner regarding existence of a prima facie case for a stay of recovery pending disposal of the appeal.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns/