IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 18TH DAY OF MARCH 2015/27TH PHALGUNA, 1936

WP(C).No. 8621 of 2015 (C)

PETITIONER:

K.V.SANKARANKUTTY,
S/O. VEERAPPAN K M(LATE), AGED 50 YEARS,
KUNNUMPURATH HOUSE, AZHAKAM P.O,
MUKKANNUR, ANGAMALY, ERNAKULAM.

BY ADVS.SRI.K.I.MAYANKUTTY MATHER
SRI.JOSE JACOB
SRI.R.JAIKRISHNA

RESPONDENT(S):
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1. UNION OF INDIA, REPRESENTED BY
SECRETARY, MINISTRY OF FINANCE,
DEPARTMENT OF REVENUE, NORTH BLOCK,
NEW DELHI - 110001.

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

3. CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
1ST FLOOR, WTC BUILDING, FKCCI COMPLEX,
K.G ROAD, BANGALORE - 5600090.

4. KERALA STATE CONSTRUCTION CORPORATION LIMITED,
POST BOX NO 30/1521-A,PONNURUNNY,
VYTTILA, KOCHI - 682 019.

R1TO R3 BY SRI.SAIBY JOSE KIDANGOOR, SC
SRI.THOMAS MATHEW NELLIMOOTTIL,SC
R4 BY SRI.M.V.THAMBAN, SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 18-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

mbr/

WP(C).No. 8621 of 2015 (C)

APPENDIX

PETITIONER(S)' EXHIBITS :

EXHIBIT P1:	**TRUE COPY OF THE MEMORANDUM OF UNDERSTANDING BETWEEN THE PETITIONER AND THE 4TH RESPONDENT DATED 8-6-2010.**
EXHBIT P2:	**TRUE COPY OF BILL DATED 30-09-2010.**
EXT.2(A) :	**TRUE COPY OF BILL DATED 19-11-2010.**
EXT. P2(B):	**TRUE COPY OF BILL DATED 28-1-2011.**
EXT. P2(C):	**TRUE COPY OF BILL DATED 23-3-2011.**
EXT. P2(D):	**TRUE COPY OF BILL DATED 24-08-2011.**
EXHIBIT P3:	**TRUE COPY OF CHALLAN DATED 29-03-2011.**
EXT.P3(A):	**TRUE COPY OF CHALLAN DATED 05-07-2011.**
EXT.P3(B):	**TRUE COPY OF CHALLAN DATED 03-09-2011.**
EXHIBIT P4:	**TRUE COPY OF SHOW CAUSE NOTICE DATED 22-04-2013.**
EXT. P4(A):	**TRUE COPY OF SHOW CAUSE NOTICE DATED 17-07-2013.**
EXHIBIT P5:	**TRUE COPY OF THE REPLY DATED 14-07-2014.**
EXT.P5(A):	**TRUE COPY OF THE REPLY DATED 14-8-2014.**
EXHIBIT P6:	**TRUE COPY OF ORDER PASSED BY THE 2ND RESPONDENT DATED 03-12-2014.**
EXHBIT P7:	**TRUE COPY OF CONFIRMATION CERTIFICATE GIVEN BY THE 4TH RESPONDENT DATED 09-03-2015.**

RESPONDENT(S)' EXHIBITS: - NIL

/TRUE COPY/

P.A. TO JUDGE

mbr/

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C) No. 8621 of 2015 (C)

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Dated this the 18th day of March, 2015

JUDGMENT

The challenge in the writ petition is against Ext.P6 order passed by the 2nd respondent confirming a demand of service tax and penalty on the petitioner. While the petitioner has raised various contentions in the writ petition against Ext.P6 order of the 2nd respondent, I note that, the petitioner has an effective alternate remedy against the said order by way of filing an appeal before the 3rd respondent Tribunal.

2. The only issue that remains to be considered is whether the petitioner would be required to deposit an amount of 7.5% of the amounts confirmed against him by Ext.P6 order, as a condition for maintaining the appeal before the 3rd respondent Tribunal, pursuant to the amendment that was introduced into the Finance Act, 1994 [for short, the 'Act, 1994'] with effect from August, 2014.

3. I note that, in the decision reported in **M/s.Muthoot Finanace Ltd. v. Union of India and Another** **(2015-TIOL-632-HC-KERALA-ST),** this Court has already taken a view that, in cases where the commencement of the lis was prior to the date of amendment to the Finance Act, 1994, namely 16.08.2014, then, the appellate remedy of the petitioner would be governed by the provisions, as it stood in the Statute, at the time of commencement of the lis. In the instant case, the show cause notice having been issued prior to 16.08.2014, the appeal to be filed before the 3rd respondent Tribunal would be governed by the provisions of the Finance Act, 1994 as amended, as it

stood prior to 16.08.2014. Resultantly, the writ petition is disposed with the following directions :

i. If the petitioner prefers an appeal against Ext.P6 order, together with an application for waiver of pre-deposit and stay, before the 3rd respondent Tribunal, on or before 31.03.2015, then, the 3rd respondent Tribunal shall treat the same as an appeal filed in accordance with the Statute as it stood prior to 16.08.2014. The 3rd respondent shall then, consider the application for waiver of pre-deposit of tax and penalty, filed by the petitioner along with the appeal, on merits, after hearing the petitioner.

ii. The recovery proceedings, if any, pursuant to Ext.P6 order shall be kept in abeyance till 31.03.2015, so as to enable the petitioner to approach the Tribunal through the appeal against Ext.P6 order.

I make it clear that, I have not made any observations as regards the merits of the case, or the legality of Ext.P6 order, that is impugned in the writ petition.

The writ petition is disposed as above.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

AMV/19/03/