

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 27TH DAY OF MARCH 2015/6TH CHAITHRA, 1937

WP(C).No. 9848 of 2015 (E)

PETITIONER:

**M/S. A.M. MOTORS, VARANGODE,
DOWN HILL.P.O., MALAPPURAM - 676 519,
REPRESENTED BY ITS PARTNER, NIHAS K.M**

**BY ADVS.SRI.HARISANKAR V. MENON
SMT.MEERA V.MENON**

RESPONDENT(S):

- 1. UNION OF INDIA,
REPRESENTED BY ITS SECRETARY,
MINISTRY OF FINANCE,
DEPARTMENT OF REVENUE,
NORTH BLOCK, NEW DELHI - 110 001.**
- 2. COMMISSIONER OF CENTRAL EXCISE,
SERVICE TAX & CUSTOMS, C.R.BUILDINGS,
MANANCHIRA, KOZHIKODE - 673 001.**

**BY SRI.THOMAS MATHEW NELLIMOOTTIL,SC
BY SRI.SAIBY JOSE KIDANGOOR**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 27-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

mbr/

WP(C).No. 9848 of 2015 (E)

APPENDIX

PETITIONER'S EXHIBITS:

**EXHIBIT P1 : COPY OF ORDER ISSUED BY THE 2ND RESPONDENT
DATED 31.12.2014.**

RESPONDENT'S EXHIBITS: - NIL

/TRUE COPY/

P.A. TO JUDGE

mbr/

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C) No.9848 of 2015 (E)

.....
Dated this the 27th day of March, 2015

JUDGMENT

The challenge in the writ petition is against Ext.P1 order passed by the 2nd respondent confirming a demand of service tax and penalty on the petitioner. Although various contentions are raised against Ext.P1 order in the writ petition, I am of the view that against Ext.P1 order, the petitioner has an effective alternate remedy by way of filing an appeal before the Customs, Excise and Service Tax Appellate Tribunal in terms of the provisions of the Finance Act, 1994 as amended.

2. The learned counsel for the petitioner would submit that as per the amendment effected to the Finance Act, 1994 with effect from 16.08.2014, there is a requirement of depositing 7.5% of the tax amount confirmed against the petitioner as a pre-condition for maintaining the appeal before the Appellate Tribunal. It is citing this requirement, and contending that he does not have an efficacious alternate remedy, that the petitioner has approached this Court through the present writ petition.

3. I have heard Sri.Harisankar V.Menon, the learned counsel for the petitioner and Sri.Thomas Mathew Nellimoottil, the learned

Standing Counsel for the respondents.

4. On a consideration of the facts and circumstances of the case and the submissions made across the Bar, I find that, against Ext.P1 order the petitioner has got an effective alternate remedy of filing an appeal before the Customs, Excise and Service Tax Appellate Tribunal. The only point that arises for consideration is whether the petitioner would have to deposit the amount of 7.5% of the tax confirmed against him, as a condition for pursuing the appellate remedy before the Tribunal. I note in this connection that recently, a Division Bench of the High Court of Telengana & Andhra Pradesh has taken a prima facie view that, in as much as the lis in question had commenced prior to the introduction of the amendment to the Finance Act, 1994, with effect from August 2014, the petitioner's right of appeal as per the erstwhile provisions of law would not be affected by the provisions introduced by the amendment of 2014. Although not expressly referred to in the interim order dated 19.02.2015 passed by the High Court of Telengana & Andhra Pradesh in W.P.No.3393/2015, the view seems to be consistent with the settled law that the institution of a suit carries with it an implication that all rights of appeal then in force are preserved to the parties thereto till the rest of the career of the suit and, further, that the right of appeal that is vested is to be governed

by the law prevailing at the date of institution of the suit or proceeding, and not by the law that prevails at the date of its decision or at the date of filing of the appeal. (**See: Garikapati Veeraya v. N.Subbiah Choudhry and Other (AIR 1957 SC 540); Messrs Hoosein Kasam Dada (India) Ltd v. The State of Madhya Pradesh and Others, (AIR 1953 SC 221; Vitthalbhai Naranbhai Patel V. Commissioner of Sales Tax M P Nagpur (AIR 1967 SC 344) and Ramesh Singh and Another v. Cinta Devi and Others (1996 (3) SCC 142)**). In that view of the matter, I find that the petitioner, in whose case also the lis commenced in 2013, would not be required to deposit the amount of 7.5%, as required pursuant to the 2014 amendment, and in that respect, he would have an efficacious alternate remedy before the Tribunal where he can file an appeal, together with an application for waiver of pre-deposit and stay of recovery of the amounts confirmed against him by Ext.P1 order. At the time of filing the appeal, he will not be required to make any payment as a pre-condition for the hearing of the waiver application by the Tribunal. I, therefore, relegate the petitioner to the alternate remedy available under the Finance Act, 1994, as amended, of approaching the Appellate Tribunal by way of an appeal against Ext.P1 order. It is made clear that the appeal to be filed by the petitioner would be governed by the statutory provisions, as they stood prior to the

amendment introduced with effect from 16.08.2014. Thus, without making any observations on the merits of the case, and without prejudice to all the contentions that the petitioner can take against Ext.P1 order of the 2nd respondent, I dismiss the writ petition in its challenge against Ext.P1 order.

5. I make it clear that, if the petitioner prefers a duly constituted appeal under the provisions of the Finance Act, 1994, as they stood prior to 16.08.2014, then the Appellate Tribunal shall number the Appeal, and consider the application filed by the petitioner for waiver of pre-deposit and stay of recovery of the amounts confirmed against him by Ext.P1 order, on merits, and thereafter, proceed to hear the appeal itself in due course.

The writ petition is disposed as above.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

AMV/28/03/

