IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 6TH DAY OF APRIL 2015/16TH CHAITHRA, 1937

WP(C).No. 11038 of 2015 (D)

PETITIONER(S):

M/S.PLATINUM SUPERSTRUCTURES (P) LTD.
PLATINUM HOUSE, KALOOR, KADAVANTHRA ROAD,
KOCHI 682 017.
REPRESENTED BY ITS DIRECTOR SRI.K.NANDANAN.

BY ADVS.SRI.ANIL D. NAIR
SRI.R.SREEJITH
SMT.C.S.SULEKHA BEEVI
SMT.ROSIE ATHULYA JOSEPH

RESPONDENT(S):

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

R1 BY ADV. SRI.SAIBY JOSE KIDANGOOR
R BY SRI.THOMAS MATHEW NELLIMOOTTIL,SC,CB EX

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 06-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C).NO.11038/2015

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE NOTICE DATED 25.10.2013 ISSUED TO THE PETITIONER BY THE RESPONDENT.

EXT.P2: COPY OF THE REPLY DATED 17.12.2013 FILED BY THE PETITIONER TO THE RESPONDENT.

EXT.P3: COPY OF THE ARGUMENT NOTE FILED DURING THE COURSE OF HEARING ON 18.7.2014.

EXT.P4: COPY OF THE ORDER DATED 31.12.2014 ISSUED BY THE RESPONDENT.

RESPONDENTS EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.11038 OF 2015 (D)

Dated this the 6th day of April, 2015

<u>J U D G M E N T</u>

The petitioner is aggrieved by Ext.P4 order passed by the respondent confirming a demand of service tax and penalty on the petitioner. The challenge in the writ petition against Ext.P4 is primarily that the respondent, while passing Ext.P4, did not specifically advert to the contentions raised by the petitioner with regard to limitation. It is pointed out that, although the petitioner had, through the reply to the show cause notice, as also through argument notes, specifically pleaded that a portion of the demand was hit by the period of limitation, the said aspect was not dealt with in Ext.P4 order passed by the respondent. It is stated that on account of the non-consideration of the contention with regard to limitation, Ext.P4 order is vitiated by non-compliance with the principles of natural justice.

2. I have heard the learned counsel for the petitioner as also the learned counsel for the respondent.

On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I am of the view that in Ext.P4, the respondent has, in fact dealt with the arguments relating to limitation, although, very briefly. In that view of the matter, the remedy of the petitioner against Ext.P4, in the absence of any jurisdictional error, lies in filing an appeal against Ext.P4 before the CESTAT, in accordance with the provisions of the Finance Act, 1994, as amended. The only apprehension raised by counsel for the petitioner, at this stage, is with regard to the requirement of payment of 7.5% of the service tax amounts confirmed against the petitioner by Ext.P4 order as a condition for maintaining the appeal before the CESTAT. I note in this connection that this Court has already taken a view that in cases where the commencement of the lis is prior to the coming into force of the amendment to the Finance Act,1994 with effect from 16.8.2014, the appeal filed by assessees before the appellate authority would be governed by the provisions of the Finance Act as they stood prior to the amendment dated 16.8.2014. Thus, the appeal to be filed by the petitioner before the CESTAT would be governed by the provisions of the Finance Act, 1994, as they stood prior to 16.8.2014. I therefore dispose this writ petition with the following directions:

> (i) If the petitioner prefers an appeal against Ext.P4 order, together with an application for waiver of pre-deposit and stay on or before 30.4.2015, then the appeal and waiver application shall be numbered by the CESTAT. The Appellate Tribunal shall thereafter proceed to hear the application for waiver of pre-deposit and stay, and thereafter the appeal itself, on merits.
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> (ii) The recovery of amounts confirmed against the petitioner by Ext.P4 order, that is impugned in the writ petition, shall be kept in abeyance for a period of two months from today so as to enable the petitioner to prefer the waiver of pre-deposit application before the Appellate Tribunal.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp