IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 17TH DAY OF SEPTEMBER 2015/26TH BHADRA, 1937

WP(C).No. 11496 of 2015 (J)

PETITIONER(S):

M/S. ITC FREIGHT SERVICES PRIVATE LIMITED,
1/371E, SINDHU, ST.MARY'S AGED 49 YEARS
ROAD, EROOR NORTH, TRIPUNITHURA
COCHI - 682 306 REPRESENTED BY
ITS' MANAGING DIRECTOR SRI.R.JAYACHANDRAN.

BY ADVS.SRI.A.KUMAR
SRI.P.J.ANILKUMAR
SMTG.MINI(1748)
SRI.P.S.SREE PRASAD
SRI.V.B.HARI NARAYANAN

RESPONDENT(S):
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1. COMMISSIONER OF CENTRAL EXCISE, CUSTOMS AND SERVICE TAX,
OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE AND CUSTOMS
COCHIN COMMISSIONERATE, CENTRAL REVENUE BUILDING
I.S.PRESS ROAD, COCHIN - 682 018.

2. SUPERINTENDENT OF CENTRAL EXCISE, SERVICE TAX RANGE,
TRIPUNITHURA, COCHIN - 682 301.

R1 & 2 BY ADV. SRI.JOHN VARGHESE,SC,CEN.BOARD OF EXCISE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
17-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 11496 of 2015 (J)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P-1:	**TRUE COPY OF THE REGISTRATION CERTIFICATE DATED 5.10.2007**
EXHIBIT P.2:	**TRUE COPY OF THE AGREEMENT FOR FREIGHT FORWARDING WITH VODAFONE DATED 28.8.2009**
EXHIBIT P.3:	**TRUE COPY OF THE RATE CONTRACT FOR CUSTOM HOUSE AGENT WITH VODAFONE DATED 14.1.2013**
EXHIBIT P.4:	**TRUE COPY OF THE AGREEMENT WITH BPL DATED 14.6.2013**
EXHBIT P.5:	**TRUE COPY OF THE SHOW CAUSE NOTICE DATED 15.10.2013**
EXHIBIT P.6:	**TRUE COPY OF THE REPLY DATED 13.11.2013**
EXHIBIT P.7:	**TURE COPY OF THE ORDER-IN-ORIGINAL DAED 31.12.2014**
EXHIBIT P.8:	**A TRUE COPY OF THE ORDER PASSED BY THE HONOURABLE TRIBUNAL IN THE CASE OF BAX GLOBAL INDIA LTD VS COMMISSIONER OF SERVICE TAX**
EXHIBIT P-9	**TRUE COPY OF JUDGMENT OF THE DELHI HIGH COURT.**

RESPONDENT(S)' EXHIBITS
-------------------------------------- **NIL**

// True copy //

PA to Judge

das

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C). No. 11496 of 2015

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Dated this the 17th day of September, 2015

JUDGMENT

The petitioner is a Private Limited Company engaged in C&F/CHA, Storage and Warehousing services etc. The challenge in the writ petition is against Ext.P7 order of the 2nd respondent, whereby the 2nd respondent has confirmed a demand of service tax and penalty on the petitioner for the period from 01.07.2008 to 31.03.2013. Although various contentions have been raised in the writ petition against Ext.P7 order of the 2nd respondent, in particular, the plea regarding limitation, as also the propriety of confirming the demand of service tax based on Rules 5 and 6 or the Service Tax Valuation Rules, which according to the petitioner, has been declared ultravires by the Honourable Delhi High Court, I am of the view that the petitioner has an effective alternate remedy against Ext.P7 order, by way of approaching the Customs, Excise and Service Tax Appellate Tribunal, through a duly constituted appeal under the Finance Act 1994 as amended. Taking note of the fact that the proceedings that culminated in Ext.P7 order were initiated by a show cause notice dated 15.10.2013, which is well before the amendment dated 06.08.2014 in the Finance Act, 1994 which mandates that an appeal before the CESTAT must be accompanied by a fee of 7.5% of the tax amounts demanded by the adjudication order, and the fact that this Court has in the decision dated 02.03.2015 in WP(C) No.6173 of 2015 rendered in a case of an assessee similarly situated as the petitioner in the instant writ petition, made it 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, while dismissing the writ petition in its challenge against Ext.P7 order, 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, if any filed by the petitioner for waiver of pre- deposit and stay of recovery of amounts confirmed against him by Ext.P7 order, on merits, and thereafter proceed to hear the appeal itself in due course. The petitioner shall file the appeal, together with the application, if any, for waiver of pre-deposit and stay, before the appellate tribunal on or before 15.10.2015. Taking note of the interim order passed by the Division Bench of this Court in the Writ Appeal preferred against the judgment referred to above, I also make it clear that the petitioner shall file an undertaking before the CESTAT undertaking to pay the appeal fee as prescribed under Finance Act

1994 in the event of the aforementioned judgment being reversed in further proceedings.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

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