IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 9TH DAY OF APRIL 2015/19TH CHAITHRA, 1937

WP(C).NO. 11915 OF 2015 (L)

PETITIONER(S):

P.SASIDHARAN NAIR
S/O.DAMODARAN PILLAI
9-B SWAPNIL ENCLAVE, MARINE DRIVE,
ERNAKULAM, KOCHI-682 031

BY ADVS.SRI.CHACKO GEORGE (SR.)
SRI.H.RAMANAN

RESPONDENT(S):

1. COMMISSIONER OF CENTRAL EXCISE,
CUSTOMS AND SERVICE TAX, COCHIN COMMISSIONERATE,
C.R. BUILDING, I.S.PRESS ROAD, KOCHI-682018

2.K.A.MOHANDAS, S/O.K.G.A.ANIRUDHAN,
SANKAR ESTATE, NH47
BY PASS, THAMMANAM P.O., KOCHI-682032

R1 BY ADV. SRI.THOMAS MATHEW NELLIMOOTTIL,SC,CB EX

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 09-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1.MEMORANDUM OF UNDERSTANDING (TRUE COPY)

EXT.P2: MINUTE OF THE MEETING (TRUE COPY)

EXT.P3: SUPPLEMENTARY MEMORANDUM OF UNDERSTANDING (TRUE COPY)

EXT.P4: FINAL ORDER OF CESTAT IN R-2'S APPEAL (TRUE COPY)

EXT.P5: FINAL ORDER OF CESTAT IN PETITIONER'S APPEAL (TRUE COPY)

EXT.P6: COMMISSIONER'S ORDER(IMPUGNED ORDER)(TRUE COPY)

RESPONDENTS EXHIBITS:NIL

TRUE COPY

P.A TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

....

W.P.(C).No.11915 of 2015

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Dated this the 9th day of April, 2015

J U D G M E N T

The challenge in the writ petition is against Ext.P6 order of the 1st respondent, whereby, the 1st respondent confirmed a demand of service tax and penalty on the petitioner under the head of Real Estate Agent Services. Although in the writ petition, the petitioner raises various contentions inter alia with regard to jurisdiction, in that, according to the petitioner, the activity rendered by the petitioner would not attract the definition of 'service' for the purposes of levy of service tax, and further, that the demand against the petitioner is hit by the period of limitation prescribed under the statute, I am of the view that the petitioner has got an effective alternative remedy against Ext.P6 order, by way of filing an appeal before the CESTAT in terms of the Finance Act, 1994 as amended. The learned Senior counsel for the petitioner would point out that, as per the amendment in the Finance Act, 1994, with effect from 16.08.2014, there is a requirement of paying 7.5% of the tax amount confirmed against the petitioner as a precondition for maintaining the appeal before the Appellate Tribunal. I note in this connection that, this Court has already taken a view that, in those cases where the commencement of the lis is prior to 16.08.2014, the date on which the Finance Act 1994 was amended, the appeals to be preferred by the assessee before the appellate Tribunal would be governed by the erstwhile provisions of the Finance Act, 1994 as they stood prior to the amendment dated 16.08.2014. Accordingly, I dispose the writ petition with the following directions:

> i. If the petitioner prefers an appeal against Ext.P6 order, together with a petition for waiver of pre-deposit and stay, within the period of limitation available to the petitioner under the statute, then the Appellate Tribunal shall number the appeal and waiver of pre-deposit application, by treating the same as a valid appeal/application filed in accordance with the provisions of the Finance Act, 1994, as they stood prior to 16.08.2014.
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> ii. I make it clear that, the appeal filed by the petitioner shall be governed by the provisions of the Finance Act, 1994 as they stood prior to 16.08.2014. To enable the petitioner to pursue his appellate remedy as above, I also stay recovery of amounts confirmed against the petitioner by Ext.P6 order, for a period of two months from today, so that the petitioner can move the Appellate Tribunal in the meanwhile, against Ext.P6 order.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns