IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 10TH DAY OF APRIL 2015/20TH CHAITHRA, 1937

WP(C).No. 12107 of 2015 (K)

PETITIONER(S):

NAVEEN ANTONY,PROPRIETOR, M/S AMBADAN ASSOCIATES,
MARY GRACE BUILDING, PULIYANMALA ROAD, KATTAPANA P.O.,
IDUKKI DISTRICT, PIN 685508

BY ADV. SRI.MOHAMMED RAFIQ

RESPONDENT(S):

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1. THE ASSISTANT COMMISSIONER OF CUSTOMS,
CENTRAL EXCISE AND SERVICE TAX, KOTTAYAM DIVISION,
SREENIVASA IYER ROAD, KOTTAYAM PIN-686001

2. THE UNION OF INDIA, REPRESENTED BY THE SECRETARY,
MINISTRY OF FINANCE, DEPARTMENT OF REVENUE,
NEW DELHI, PIN-110001

R1&R2 BY ADV. SRI.SAIBY JOSE KIDANGOOR
R1 & R2 BY SRI.THOMAS MATHEW NELLIMOOTTIL,SC,

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 10-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 12107 of 2015 (P)

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: THE TRUE COPY OF THE ORDER-IN-ORIGINAL NO.9/2013 ST DATED 28.02.2013 PASSED BY THE FIRST RESPONDENT

EXT.P2: THE TRUE COPY OF RECTIFICATION APPLICATION DATED 04.12.2014 FILED BY THE PETITIONER UNDER SECTION 74 OF THE FINANCE ACT, 1994 BEFORE 1ST RESPONDENT

EXT.P3: THE TRUE COPY OF THE ORDER C NO.IV/9/5/2012 ST.ADJ. DATED 28.02.2015 PASSED BY THE FIRST RESPONDENT

RESPONDENTS' EXHIBITS: NIL

//TRUE COPY//

P A TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C).No.12107 of 2015

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Dated this the 10th day of April, 2015

J U D G M E N T

Against Ext.P1 order of the 1st respondent confirming a demand of service tax and penalty on the petitioner, the petitioner had preferred rectification application before the assessing authority. The rectification application also came to be rejected by Ext.P3 order. The challenge in the writ petition is against both Exts.P1 and P3 orders, inter alia, on the ground that while passing the said orders, the 1st respondent had not considered the legal submission in the true perspective and confirmed the demand against the petitioner. Although, various contentions are raised in the writ petition against Exts.P1 and P3 orders, I am of the view that the petitioner has an effective alternative remedy against Ext.P1 order as confirmed by Ext.P3 order before the appellate authority under the Finance Act, 1994. Accordingly, relegating the petitioner to his alternate remedy under the Finance Act, 1994, against Exts.P1 and P3 orders, I dismiss the writ petition in its challenge against Exts.P1 and P3 orders.

Counsel for the petitioner would submit that on account of the pendency of the rectification application before the 1st respondent, he had not preferred an appeal against Ext.P1 before the appellate authority within time. It is his submission that if the time during which the matter was pending before the original authority in connection with the rectification application is excluded, then he would still have time to file an appeal as per the statutory provisions. Taking note of the contention of the counsel for the petitioner, I make it clear that if the petitioner files an appeal against Exts.P1 and P3 orders, within a period of one month from today, then the appellate authority shall treat the same as a validly constituted appeal for the purposes of considering and disposing the same on merits.

The writ petition is disposed of as above.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns