

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. 12141 OF 2015 (P)

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) :

1. THE ASSISTANT COMMISSIONER OF CUSTOMS,
CENTRAL EXCISE AND SERVICE TAX, KOTTAYAM DIVISION,
SREENIVASA IYER ROAD, KOTTAYAM PIN686001
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. 12141 OF 2015 (P)

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: TRUE COPY OF THE ORDER IN ORIGINAL NO.38/2014 ST DATED
13.11.2014 PASSED BY THE FIRST RESPONDENT

EXT.P2: TRUE COPY OF RECTIFICATION APPLICATION DATED 07.04.2015 FILED
BY THE PETITIONER BEFORE 1ST RESPONDENT

RESPONDENTS' EXHIBITS: NIL

//TRUE COPY//

P A TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C).No.12141 of 2015

.....
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 has preferred a rectification application before the assessing authority. Although, various contentions are raised in the writ petition against Ext.P1 order, and it is also mentioned that Ext.P2 application seeking rectification of the same is pending before the 1st respondent, I note that the petitioner has an effective alternate remedy against Ext.P1 order of the 1st respondent, by way of filing an appeal before the appellate authority under the Finance Act, 1994, as amended. Counsel for the petitioner would point out that, on account of his pursuing the rectification application before the 1st respondent, he has not filed an appeal before the appellate authority, against Ext.P1 order, till date.

On a consideration of the submissions on either side, and taking note of the fact that the petitioner did not file an appeal against Ext.P1 order, owing to his having filed a rectification application before the 1st respondent, the prayer in which cannot, in my view, be granted by the 1st respondent, I direct that, if the petitioner files an appeal against Ext.P1 order, 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 as above.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns