IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

TUESDAY, THE 5TH DAY OF MAY 2015/15TH VAISAKHA, 1937

WP(C).No. 12845 of 2015 (E)

PETITIONER(S):

THE PERINGOTTUKURUSSI SERVICE
CO-OPERATIVE BANK LIMITED NO.P 519,
PARUTHIPULLY P.O., PALAKKAD DISTRICT,
REPRESENTED BY ITS SECRETARY.

BY ADV. SRI.O.D.SIVADAS.

RESPONDENT(S):
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1. THE COMMISSIONER,
   OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE,
   CUSTOMS AND SERVICE TAX,
   CALICUT COMMISSIONERATE, MANANCHIRA, CALICUT.

2. THE ADDITIONAL COMMISSIONER,
   OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE,
   CUSTOMS AND SERVICE TAX,
   CALICUT COMMISSIONERATE, MANANCHIRA, CALICUT.

3. THE SUPERINTENDENT OF CENTRAL EXCISE,
   CUSTOMS AND SERVICE TAX, PALAKKAD RANGE,
   C.R. BUILDING, METTUPALAYAM STREET,
   PALAKKAD DISTRICT- 678 001.

BY ADV. SRI.THOMAS MATHEW NELLIMOOTTIL, SC.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 05-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rs.

WP(C).No. 12845 of 2015 (E)

APPENDIX

PETITIONER'S EXHIBITS:-

EXT.P1 - **TRUE COPY OF THE REPLY DATED 14/11/2014 SUBMITTED BY THE PETITIONER SOCIETY.**

EXT.P2 - **TRUE COPY OF THE PROCEEDING DATED 03/03/2015 ISSUED BY THE 3RD RESPONDENT.**

EXT.P3 - **TRUE COPY OF THE REPLY DATED 14/11/2014 SUBMITTED BY THE PETITIONER SOCIETY.**

EXT.P4 - **TRUE COPY OF THE JUDGMENT DATED 05/02/2013 IN WP(C).NO.6393 OF 2012 ISSUED BY THIS HON'BLE COURT.**

EXT.P5 - **TRUE COPY OF THE JUDGMENT DATED 15/12/2014 IN WP(C).NO.30627 OF 2014 ISSUED BY THIS HON'BLE COURT.**

RESPONDENT'S EXHIBITS:- **NIL.**

//TRUE COPY//

P.S. TO JUDGE

rs.

P.V.ASHA, J.

W.P(c) No.12845 of 2015-E

Dated this the 5th day of May, 2015

JUDGMENT

The case of the petitioner is that the petitioner's establishment is a co-operative society registered under the relevant provisions of the Kerala Co-operative Societies Act. The contention of the petitioner is that none of the activities being pursued by the petitioner society will come within the purview of Section 65(12)(v) of the Finance Act, so as to attract payment of any Service Tax. It is without any regard to the actual facts and figures and relevant provisions of law, that the petitioner was served with show cause notice dated 03.02.2014 followed by Ext.P2 notice intending to proceed with further steps to mulct liability upon the petitioner. It is stated that the petitioner has already submitted Exts.P1 and P3 replies in response to the above notices. Reference is also made to Ext.P4 and Ext.P5 judgments as to the course to be pursued. As per the said verdicts, this Court directed the departmental authorities to consider the case projected by those like the petitioner therein, as to their liability to pay service tax and if the liability is upheld, to proceed with further steps for quantifying the same as well.

2. When the matter is taken up for consideration, the learned counsel for the petitioner submits that the issue is squarely covered by the decision of this Court in W.P(c) No.28713 of 2014 in favour of the petitioner and seeks for similar relief in this case as well. I heard the learned counsel for the respondents also.

3. In the above circumstance, this Writ Petition is disposed of in terms of the judgment in W.P(c) No.28713 of 2014, the relevant paragraphs of the said judgment are extracted below:

> "3. The learned Standing Counsel for the respondents submits that, pursuant to Exts.P4 and P5 judgments, the matter was considered by the competent authority and a finding was rendered holding that the activity pursued by the said society was very much within the purview of Service Tax net and accordingly, assessment was finalised and the liability was quantified, passing appropriate orders in this regard. A copy of the order dated 18.07.2014 in ORIGINAL No.88/2014/ST is placed for perusal of this Court.

4. The learned Counsel for the petitioner submits that whether the petitioner's activities will come within the purview of `TAX NET' is a matter to be considered with reference to the bye-laws and other records maintained by the Society in relation to the activities.

5. In the said circumstance, the petitioner is relegated to pursue the matter before the third respondent/Superintendent of Central Excise in response to Exts.P1 and P3 proceedings. The third respondent/ Superintendent of Central Excise/competent authority shall consider the reply submitted by the petitioner by way of Exts.P2 and P6 and shall also hear the petitioner on the question of their liability to pay service tax; and if the liability is upheld, direction be given to the petitioner to produce further documents for quantification of the liability. The proceedings, as above, shall be finalised at the earliest, at any rate, within two months from the date of receipt of a copy of the judgment. The petitioner shall produce a copy of the judgment along with a copy of the writ petition before the competent authority for further steps. All contentions are left open."

In view of the submission made by the learned counsel for the petitioner that service tax demanded has already been satisfied under protest, but the adjudication is still to be finalised, it is made clear that in the course of such adjudication exercise, if the authority arrives at a finding that the petitioner is not liable to satisfy the service tax, the amount already satisfied by the petitioner shall be refunded at the earliest, at any rate, within one month thereafter.

The Writ Petition is disposed of accordingly.

Sd/-
(P.V.ASHA, JUDGE)

rtr/