IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

THURSDAY, THE 25TH DAY OF JUNE 2015/4TH ASHADHA, 1937

WP(C).No. 15464 of 2015 (G)
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PETITIONER:
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THE PALAKKAD DISTRICT CO-OPERATIVE BANK LTD.,
HEAD POST OFFICE ROAD, PALAKKAD,
REPRESENTED BY ITS GENERAL MANAGER,
A.SUNIL KUMAR.

BY ADVS.SRI.HARISANKAR V. MENON
SMT.MEERA V.MENON

RESPONDENT:
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THE DEPUTY COMMISSIONER OF CENTRAL EXCISE,
PALAKKAD- I DIVISION, METTUPALAYAM STREET,
PALAKKAD -678 001

BY ADV. SRI.JOHN VARGHESE,SC,CEN.BOARD OF EXCISE
SRI.THOMAS MATHEW NELLIMOOTTIL,SC,CB EX

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 25-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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WP(C).No. 15464 of 2015 (G)
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APPENDIX

PETITIONER(S)' EXHIBITS
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P1:- COPY OF RETURN FOR THE PERIOD APRIL TO SEPTEMBER 2011 FILED BY THE PETITIONER DATED 22/06/2012

P1(A):- COPY OF RETURN FOR THE PERIOD OCTOBER 2011 TO MARCH 2012 FILED BY THE PETITIONER DATED 25/04/2012

P1(B):- COPY OF RETURN FOR THE PERIOD APRIL 2012 TO JUNE 2012 FILED BY THE PETITIONER DATED 15/11/2012

P1(C):- COPY OF RETURN FOR THE PERIOD JULY 2012 TO SEPTEMBER 2012 FILED BY THE PETITIONER DATED 30/04/2013

P1(D):- COPY OF RETURN FOR THE PERIOD OCTOBER 2012 TO MARCH 2013 FILED BY THE PETITIONER DATED 31/08/2013

P2:- COPY OF DECLARATION SUBMITTED BY THE PETITIONER DATED 13/05/2013

P3:- COPY OF NOTICE ISSUED BY THE 2ND RESPONDNET DATED 28/11/2014

P4:- COPY OF REPLY FILED BY THE PETITIONER DATED 04/12/2014

P5:- COPY OF ORDER PASSED BY THE RESPONDENT DATED 11/12/2014

RESPONDENT(S)' EXHIBITS: NIL
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/TRUE COPY/

P.A.TO JUDGE

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**A.MUHAMED MUSTAQUE, J.**

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W.P.(C) No.15464 of 2015

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Dated this the 25th day of June, 2015

**J U D G M E N T**

The petitioner Co-operative Bank is an assessee to service tax under the Finance Act, 1994. The petitioner impugns Ext.P5 order passed by the respondent.

2. The petitioner while filing returns under the Finance Act, 1994, had not disclosed the liability under Rule 6 (3B) of CENVAT Credit Rules, 2004. Therefore, the petitioner took the benefit of Service Tax Voluntary Compliance Encouragement Scheme, 2013 and filed Ext.P2 declaration. This declaration has been rejected by Ext.P5. The petitioner points out that, the impugned order did not advert to the petitioner's returns to hold that, the petitioner is not entitled for the benefit of 2013 Voluntary Compliance Scheme.

3. The learned Standing Counsel for the respondent submits that, essentially the disputed question of fact is whether the dues were duly declared or not has to be verified with reference to the returns and that, the same requires a probe into facts. Therefore, the petitioner has an alternative remedy before the Commissioner of Appeals.

4. Taking note of the nature of issues, I am of the view that, essentially it is a pure disputed question of fact. The benefit of Voluntary Compliance Scheme would depend upon the nature of the returns submitted by the petitioner. In that view of the matter, a

probe into facts and aspects is necessary. Hence, this Court do not find any reason to justify an interference.

Accordingly, declining jurisdiction, this writ petition is disposed of. The petitioner is relegated to their appellate remedy. Time involved before this Court from 09.04.2015 till today shall be excluded, while considering the application for delay. All issues are left open.

Sd/-
**A.MUHAMED MUSTAQUE, JUDGE.**

AV