IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 9TH DAY OF JUNE 2015/19TH JYAISHTA, 1937

WP(C).No. 17144 of 2015 (P)

PETITIONER(S):

M/S.MUTHOOT FINANCE LIMITED,
MUTHOOT CHAMBERS, BANERJI ROAD,
COCHIN -682 018, REPRESENTED BY ITS
AUTHORIZED SIGNATORY MR.MANOJ JACOB.

BY ADV. SRI.JOSE JACOB.

RESPONDENT(S):

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1. UNION OF INDIA,
   REPRESENTED BY SECRETARY,
   MINISTRY OF FINANCE, DEPARTMENT OF REVENUE,
   NORTH BLOCK, NEW DELHI -110 001.

2. COMMISSIONER OF CENTRAL EXCISE,
   CUSTOMS & SERVICE TAX,
   OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE,
   CUSTOMS AND SERVICE TAX, C.R. BUILDING,
   I.S. PRESS ROAD, KOCHI -682 018.

BY ADV. SRI.THOMAS MATHEW NELLIMOOTTIL, SC.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 09-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rs.

WP(C).No. 17144 of 2015 (P)

APPENDIX

PETITIONERS' EXHIBITS:

P1: TRUE COPY OF THE AGREEMENT DATED 20.12.2010.

P2: TRUE COPY OF THE SHOW CAUSE NOTICE NO.194/2012/ST DATED 22.10.2012.

P3: TRUE COPY OF THE REPLY TO SHOW CAUSE NOTICE NO.194/2012/ST DATED 19/02/2013.

P4: TRUE COPY OF THE SHOW CAUSE NOTICE NO.177/2014/ST DATED 21.05.2014.

P5: TRUE COPY OF THE REPLY TO SHOW CAUSE NOTICE NO.177/2014/ST DATED 15/07/2014.

P6: TRUE COPY OF ORDER DATED 31.12.2014.

P7: TRUE COPY OF JUDGMENT DATED 04.03.2015.

P8: TRUE COPY OF WRITTEN SUBMISSIONS DATED 28.04.2015.

P9: TRUE COPY OF ORDER DATED 11.05.2015.

RESPONDENTS' EXHIBITS: NIL.

//TRUE COPY//

P.A. TO JUDGE

rs.

A.MUHAMED MUSTAQUE, J.

W.P.(C) No.17144 of 2015

Dated this the 9th day of June, 2015

<u>J U D G M E N T</u>

The petitioner impugns the order passed by the Commissioner of Central Excise and Customs by Ext.P9.

2. The petitioner has approached this Court invoking Article 226 of the Constitution on the ground that, while passing the impugned order the Commissioner did not follow the direction in the judgment of this Court in W.P.(C).No.4616/2015 dated 04.03.2015.

3. The petitioner approached this Court in W.P.(C). No.4616/2015 challenging the liability to pay service tax and penalty in the light of the judgment of this Court in ***Paul Merchants Ltd. v. Commissioner of C.Ex., Chandigarh (2013 (29) S.T.R 257]***. It was canvassed by the petitioner that, the finding in the judgment cannot be ignored by the Commissioner while deciding the issue relating to the petitioner's liability to pay service tax. This Court taking note of the ratio in ***Paul Merchants case*** held that, the adjudicating authority is bound to follow the decision of Larger Bench of appellate Tribunal. This Court also observed that, the Commissioner while passing the impugned order therein, failed to distinguish the case in hand from the ratio of ***Paul Merchants case***. Therefore, it is held that unless a departure is possible on facts and law, the Commissioner is bound by the decision of ***Paul Merchants case*** and directed the Commissioner

to reconsider the matter afresh after adverting to ***Paul Merchants case supra***.

4. Thereafter, the Commissioner passed this impugned order. In the impugned order, the Commissioner adverted to ***Paul Merchants case*** and found out that, distinguishable features as against the assessee with regard to the law applicable as propounded in Paul Merchants case supra, he has narrated each of the distinctions in the impugned order. The learned counsel for the petitioner would urge that, the attempt of the Commissioner is only to bye pass facts and law on unfounded reasons without having any factual foundations on facts or law. It is submitted that, the impugned order is passed in derelictions of the directions of this Court in the judgment in W.P.(C).No.4616/2015. It is further submitted that, the petitioner is forced to resort to appellate remedy and they will be mulcted with liability to pay 7.5% as pre-deposit to entertain appeal.

5. On the other hand the learned Standing Counsel for the Department would submit that, the petitioner cannot bye pass the statutory remedy. In the impugned order itself, distinguishable features have been drawn out not to follow the ratio in ***Paul Merchants case***.

6. I am of the view that, distinguishable features made out by the Commissioner is based on facts. ***Paul Merchants case*** is required to be followed, if otherwise ratio is applicable. The

appreciation of facts essentially required in this matter. The appropriate remedy, in this circumstances, is for the petitioner to redress appellate remedy. This Court under Article 226 of the Constitution cannot sit upon the order of the Commissioner to act like an appellate authority and appreciate the facts which has been pointed out in Ext.P9. Therefore, the petitioner shall seek their remedy by resorting to appellate provisions.

7. With regard to the payment of pre-deposit of 7.5%, this proceedings is essentially before the amendment to the Finance Act, 2014. Therefore, the Tribunal has necessary power to consider the waiver application. Therefore, the Tribunal shall consider the waiver application in the light of ***Paul Merchants case***.

This writ petition is therefore disposed of directing the petitioner to approach the appellate authority challenging Ext.P9. The petitioner's application for waiver shall be considered by the appellate authority after adverting to the dictum of ***Paul Merchants case*** cited supra. To work out alternative remedies, coercive steps against the petitioner shall be deferred for the period of three months.

Sd/-
A.MUHAMED MUSTAQUE, JUDGE.

AV