

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 28TH DAY OF SEPTEMBER 2015/6TH ASWINA, 1937

WP(C).No. 19035 of 2015 (D)

PETITIONER(S):

**SUD CHEMIE INDIA (P) LTD AGED 57 YEARS
EDAYAR INDUSTRIAL DEVELOPMENT AREA, BINANIPURAM.P.O
KOCHI-683 502
REPRESENTED BY ITS EXECUTIVE VICE PRESIDENT
SRI.GHAN SHYAM NAIR.**

**BY ADVS.SRI.BECHU KURIAN THOMAS
SRI.RONY JOSE**

RESPONDENT(S):

- 1. UNION OF INDIA
UNION OF INDIA, MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
NEW DELHI-110 001. REPRESENTED BY THE SECRETARY.**
- 2. COMMISSIONER OF CENTRAL EXCISE,
C.R.BUILDINGS, I.S.PRESS ROAD, COCHIN-682 018.**
- 3. SUPERINTENDED OF CENTRAL EXCISE, PARUR RANGE,
ERNAKULAM I DIVISION, P.M.A., BUILDING, ALWAYE-683 101.**

R1-R3 BY ADV. SRI.THOMAS MATHEW NELLIMOOTTIL,SC,CB EXCISE

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
28-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1- TRUE COPY OF RELEVANT EXTRACT OF THE NOTIFICATION NO.3/2011-CENTRAL EXCISE (N.T) PUBLISHED IN G.S.R. 134(E) , DTED THE 1ST MARCH, 2011
- EXT.P2- TRUE COPY OF HTE CIRCULAR NO.943/04/2011-CX DATED 29.4.11 ISSUED BY HTE 1ST RESPONDENT
- EXT.P3- TRUE COPY OF THE NOTICE DATED 30.11.12 ISSUED BY THE 3RD RESPONDNET TO THE PETITIONER
- EXT.P4- TRUE COPY OF THE REPLY NOTICE DATED 29.1.2013 ISSUED BY THE PETITIONER TO THE 3RD RESPONDENT
- EXT.P5- TRUE OCPY OF THE LETTER DATED 26.8.2013 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER
- EXT.P6- TRUE OCPY OF THE LETTER DATED 12.9.2013 ISSUED BY THE PETITIOENR OT THE 3RD RESPONDNET
- EXT.P7- TRUE COPY OF THE LETTER DATED 24.12.2013 ISSUED FROM THE OFFICE OF THE 3RD RESPONDENT TO THE PETITIONER
- EXT.P8- TRUE OCPY OF THE LETTER DATED 26.12.2013 ALONG WITH THE LEDGER STATEMENTS ISSUED BY THE PETITIOENR OT THE 3RD RESPONDENT
- EXT.P9- TRUE COPY OF THE SHOW CAUSE NOTICE DATED 6.5.15 ISSUED BY THE 2ND RESPONDNET TO THE PETITIONER

RESPONDENT'S EXHIBITS:-

NIL

// True copy //

PA to Judge

das

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C). No. 19035 of 2015

Dated this the 28th day of September, 2015

JUDGMENT

The challenge in the writ petition is against Ext.P9 show cause notice dated 06.05.2015, that has been issued to the petitioner proposing to disallow Cenvat Credit availed by the petitioner during the period from 2010-2011 to 2013-2014. Although various contentions are raised in the writ petition against Ext.P9 show cause notice, I find that the petitioner has an effective alternate remedy by way of filing a formal objection to Ext.P9 show cause notice and getting the matter adjudicated by the authorities under the Finance Act, 1994 as amended, pertaining to service tax. I therefore, see no reason to interfere with Ext.P9 show cause notice in these proceedings under Article 226 of the Constitution of India. The writ petition in its challenge against Ext.P9 show cause notice fails and is accordingly, dismissed.

The learned senior counsel appearing for the petitioner would point out that the time initially granted in Ext.P9 for filing the reply has expired during the pendency of the writ petition. Taking note of the said contention, I permit the petitioner to file a reply to Ext.P9 show cause notice within a period of one month from the date of receipt of a copy of this judgment. The respondents shall

on their part, treat the reply to be filed by the petitioner to Ext.P9 show cause notice, pursuant to this judgment, as a valid reply, filed to the said notice and proceed to adjudicate the matter on merits, after affording the petitioner an opportunity of being heard. The challenge of the petitioner against the constitutional validity of the Explanation to Rule 2 E of the Cenvat Credit Rules, 2004 as amended, is left open to be decided in an appropriate case.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

das