IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 18TH DAY OF FEBRUARY 2015/29TH MAGHA, 1936

WP(C).No. 26949 of 2014 (P)

PETITIONER(S):

DILEEP KUMAR V.S.,
VAYAKKATTIL HOUSE, ENGANDIYOOR P.O.,
THRISSUR DISTRICT-680 615.

BY ADVS.SRI.M.V.BOSE,
SMT.NISHA BOSE.

RESPONDENT(S):
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1. UNION OF INDIA,
REPRESENTED BY SECRETARY TO FINANCE,
MINISTRY OF FINANCE, (DEPARTMENT OF REVENUE),
NORTH BLOCK, NEW DELHI-110 001.

2. THE COMMISSIONER,
CENTRAL EXCISE, CUSTOMS & SERVICE TAX APPEALS,
C.R. BUILDING, I.S. PRESS ROAD, COCHIN-682 018.

R1 BY ADV. SRI.N.NAGARESH, ASSIST. S.G. OF INDIA.
R2 BY ADV. SRI.SAIBY JOSE KIDANGOOR, SC.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rs.

WP(C).No. 26949 of 2014 (P)

APPENDIX

PETITIONER'S EXHIBITS:-

EXT.P1. TRUE COPY OF RELEVANT PORTION OF AGREEMENT DATED 06/06/2003 EXECUTED BETWEEN THE STATE OF KERALA AND THE PETITIONER.

EXT.P2. TRUE COPY OF THE AGREEMENT DATED 22/10/2007 EXECUTED BETWEEN STATE OF KERALA AND PETITIONER.

EXT.P3. TRUE COPY OF CIRCULAR NO.152/3/2012-ST DATED 22/02/2012 ISSUED BY THE CENTRAL BOARD OF EXCISE & CUSTOMS, NEW DELHI.

EXT.P4. TRUE COPY OF THE SUMMONS DATED 22/08/2013 ISSUED BY THE 3RD RESPONDENT.

EXT.P5. TRUE COPY OF STATEMENT DATED 05/09/2013 RECORDED BY THE 3RD RESPONDENT.

EXT.P6. TRUE COPY OF THE LETTER DATED 18/10/2013 ISSUED BY THE PETITIONER.

EXT.P7. TRUE COPY OF SHOW-CAUSE NOTICE DATED 22/10/2013 ISSUED BY THE 2ND RESPONDENT.

EXT.P8. TRUE COPY OF THE REPLY DATED 20/11/2013 SEND BY THE PETITIONER TO THE 2ND RESPONDENT.

EXT.P9. TRUE COPY OF JUDGMENT DATED 07/01/2014 IN WP(C).NO. 31949/2013.

EXT.P10. TRUE COPY OF THE ARGUMENT NOTES SUBMITTED BY THE PETITIONER BEFORE THE AUTHORITY.

EXT.P11. TRUE COPY OF THE ORDER DATED 26/02/2014 PASSED BY THE AUTHORITY.

EXT.P12. TRUE COPY OF JUDGMENT DATED 28/05/2014 IN WP(C).NO. 10852/2014.

EXT.P13. TRUE COPY OF THE ORDER DATED 17/07/2004 IN ORDER-IN-APPEAL NO.529/2014-ST PASSED BY THE COMMISSIONER OF CENTRAL EXCISE, CUSTOMS OF SERVICE TAX (APPEALS).

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.26949 OF 2014 (P)

Dated this the 18th day of February, 2015

J U D G M E N T

The petitioner, who was assessed to service tax by Ext.P11 order of the Joint Commissioner of Central Excise and Customs, Cochin, has preferred an appeal before the 2nd respondent, Appellate authority. By Ext.P13 order, the 2nd respondent rejected the appeal and upheld Ext.P11 order of the adjudicating authority. In the writ petition, Ext.P13 order of the Appellate authority is challenged. It is the contention of the petitioner that both the adjudicating authority and the appellate authority have not expressly considered the issue of jurisdiction that was directed to be considered by this Court in Ext.P9 judgment. It is also the case of the petitioner that the appellate authority in Ext.P13 order has not considered the plea of limitation that was raised by the petitioner.

2. I have heard Sri.Vinod Madhavan, the learned counsel appearing for the petitioner as also Sri.Saiby Jose Kidangoor, the learned Standing counsel appearing for the respondents.

On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I find that against Ext.P13 order of the 2nd respondent, the petitioner has an effective alternate remedy by way of an appeal before the Customs Excise and Service Tax Appellate Tribunal. No doubt, the learned counsel for the petitioner would point out that the filing of an appeal before the Tribunal necessitates a payment of 10% of the tax confirmed against the petitioner by Ext.P13 order, as a precondition for maintaining the appeal before the Tribunal. I find, however, that the said condition is not so onerous as would deprive the petitioner of an effective right of appeal against Ext.P13 order. This is more so because, when compared to the erstwhile provisions under the Finance Act, 1994, as amended, governing service tax, the present requirement of depositing only 10% of the tax amounts confirmed against the petitioner, as a condition for maintaining the appeal, is fairly reasonable and imposes a lighter burden on an assessee. Thus, keeping open all the contentions of the petitioner on merits, I relegate the petitioner to the remedy of filing an appeal against Ext.P13 order of the 2nd respondent. The present writ petition, in its challenge against Ext.P13 order, is hence dismissed as not maintainable.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp