IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 13TH DAY OF OCTOBER 2015/21ST ASWINA, 1937

WP(C).No. 30992 of 2015 (Y)

PETITIONER(S):

M/S.EXCEL CORRUGATED BOXES PVT. LIMITED,
NOMBIKKODE, PARA, PALAKKAD-678 622.
REPRESENTED BY MANAGING DIRECTOR.

BY ADVS.SRI.ANIL D. NAIR,
SRI.M.BALAGOPAL,
SRI.R.SREEJITH,
SMT.ROSIE ATHULYA JOSEPH,
SMT.O.A.NURIYA.

RESPONDENT(S):
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1. THE DEPUTY COMMISSIONER OF
CENTRAL EXCISE & CUSTOMS,
PALAKKAD II DIVISION, METTUPALAYAM STREET,
P.B. NO.33, PALAKKAD-678 001.

2. THE COMMISSIONER OF CE, CUS & ST (APPEALS),
CR BUILDINGS, IS PRESS ROAD, COCHIN-682 018.

BY ADV. SRI.THOMAS MATHEW NELLIMOOTTIL, SC.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 13-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rs.

WP(C).No. 30992 of 2015 (Y)

APPENDIX

PETITIONER'S EXHIBITS:-

EXT.P1	COPY OF THE ER-3 RETURN DATED 18/07/2005 ALONG WITH THE PLA.
EXT.P2	COPY OF THE SHOW CAUSE NOTICE DATED 17/07/2006.
EXT.P3	COPY OF THE ORDER IN-ORIGINAL NO.76/2006 DATED 15/09/2006.
EXT.P4	COPY OF THE ORDER-IN-APPEAL NO.21/2008 DATED 30/01/2008.
EXT.P5	COPY OF THE FINAL ORDER NO.797/2010 DATED 23/04/2010 OF THE HON'BLE CESTAT.
EXT.P6	COPY OF THE ORDER-IN-ORIGINAL NO.21/2010 DATED 31/12/2010.
EXT.P7	COPY OF THE ORDER-IN-APPEAL NO.CAL-EXCUS-000-056-15-16 DATED 23/06/2015.
EXT.P8	COPY OF THE LETTER C. NO.III/10/15/2015 RTI DATED 06/04/2015.
EXT.P9	COPY OF THE DEMAND NOTICE NO.257/2015 DATED 15/07/2015.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

A.K.JAYASANKARAN NAMBIAR, J.
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W.P.(C). No. 30992 of 2015
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Dated this the 13th day of October, 2015

JUDGMENT

The challenge in the writ petition is against Ext.P7 order passed by the 2nd respondent in an appeal preferred by the petitioner against Ext.P6 order of the 1st respondent. The grievance of the petitioner in the writ petition is essentially that, while on an issue of irregular availment of CENVAT credit, the appellate tribunal had, in an earlier round of litigation, found in favour of the petitioner, on the aspect of limitation not having been considered by the lower authority, and remanded the matter to the 1st respondent for a fresh adjudication, inter alia, on the aspect of limitation, the 1st respondent by Ext.P6 order had erroneously considered the point with regard to limitation against the petitioner. Although the petitioner filed an appeal against Ext.P6 order before the 2nd respondent, the 2nd respondent dismissed the appeal, by confirming Ext.P6 order of the 1st respondent. The petitioner would now rely on Ext.P8 information that is received pursuant to an RTI application, which would show that the basis of the finding in Ext.P6 order with regard to limitation is erroneous, since it is acknowledged by the respondents that the copy of the ER-3 returns that was filed by the petitioner, was not available in the office of the respondent. The learned counsel for the petitioner would submit that, in the absence of any copy of the ER-3 returns filed by the petitioner being available with the respondents, the 1st respondent could not have come to a conclusion in Ext.P6 order, that the ER-3 returns filed by the petitioner was received in his office only on 20.07.2005.

2. I have heard the learned counsel appearing for the petitioner as also the learned Standing Counsel for the respondents.

On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that, inasmuch as the issue raised in the writ petition, based on Ext.P8 reply received by the petitioner pursuant to his query under the RTI Act, involves a verification of facts, the petitioner would need to agitate the matter before the appellate authority under the Central Excise Act. Thus, I dismiss the writ petition in its challenge against Ext.P7 order but relegate the petitioner to his alternate remedy of filing an appeal against Ext.P7 order before the CESTAT. I make it clear that, inasmuch as the show cause notice in the instant case was received by the petitioner in 2006, the petitioner would be entitled to the benefit of the judgment of this Court in WP(C) No.6173 of 2015 dated 02.03.2015 and the appeal to be preferred by the petitioner would have to be dealt with in accordance with the provisions of the Central Excise Act, as they stood prior to the amendment with effect from 06.08.2014.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

das /14.10.15