

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 5TH DAY OF FEBRUARY 2015/16TH MAGHA, 1936

WP(C).No. 33699 of 2014 (J)

PETITIONER(S) :

T.M.IJAS,
THANNICKAL HOUSE, AZAD ROAD, KALOOR
KOCHI 682 017

BY ADVS.SRI.M.V.BOSE
SRI.VINOD MADHAVAN
SMT.NISHA BOSE

RESPONDENT(S) :

1.UNION OF INDIA
REPRESENTED BY SECRETARY TO FINANCE
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE) NORTH BLOCK
NEW DELHI 110001

2. THE JOINT COMMISSIONER,
CENTRAL EXCISE, CUSTOMS & SERVICE TAX
OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE
COCHIN COMMISSIONERATE, CENTRAL REVENUE BUILDING
I.S PRESS ROAD, COCHIN 682 018

R1 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL
R2 BY ADV. SRI.JOHN VARGHESE,SC,CEN.BOARD OF EXCIS
R BY SRI.THOMAS MATHEW NELLIMOOTTIL,SC,CB EX

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
05-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) .No. 33699 of 2014 (J)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXHIBIT P1 TRUE COPY OF THE RELEVANT PAGE OF THE AGREEMENT DATED
18-04-2007 EXECUTED BETWEEN THE STATE OF KERALA AND THE PETITIONER

EXHIBIT P2 TRUE COPY OF THE RELEVANT PAGE OF THE AGREEMENT DATED
31-3-2009 EXECUTED BETWEEN THE STATE OF KERALA AND THE PETITIONER

EXHIBIT P3 TRUE COPY OF THE 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 22.8.2013 ISSUED BY THE
DEPARTMENT

EXHIBIT P5 TRUE COPY OF THE STATEMENT, DATED 05-09-2013, RECORDED BY
THE CONCERNED AUTHORITY

EXHIBIT P6 TRUE COPY OF THE SHOW CAUSE NOTICE DATED 7-10-2014

EXHIBIT P7 TRUE COPY OF THE REPLY DATED 6-11-2014 FURNISHED BY THE
PETITIONER

RESPONDENT(S) ' EXHIBITS: NIL

//TRUE COPY//

P.A TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C).No.33699 of 2014

.....
Dated this the 5th day of February, 2015

JUDGMENT

The petitioner who was engaged in the collection of toll, on behalf of the Government, is aggrieved by Ext.P6 show cause notice that has been issued to him by the 2nd respondent, demanding service tax as applicable to business auxiliary service in respect of alleged services rendered by him to the Government. In the writ petition, the petitioner impugns the said show cause notice, inter alia, on the ground of jurisdiction stating that the levy of service tax, as applicable to business auxiliary services, is not attracted in the petitioner's case and secondly, that the show cause ought to have been issued within a period of one year which is the normal period of limitation under the Finance Act, 1994, as amended, and further that the extended period of limitation could not have been invoked against him.

2. I have heard Sri.Vinod Madhavan, the learned counsel for the petitioner and Sri.John Varghese, the learned Standing counsel

for the respondents.

3. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that although the petitioner has raised various contentions in the writ petition, with regard to Ext.P1 show cause notice that has been issued to him, I do not feel that this is a case which necessitates the interference by this Court, with Ext.P6 show cause notice issued to the petitioner by 2nd the respondent. It is trite that this Court will not interfere with a show cause, save in limited circumstances such as where the notice is seen to have been issued by an authority that does not have jurisdiction and where the notice is issued beyond the maximum period of limitation prescribed under the statute. In as much as in the instant case, I do not find any such irregularity, I feel the petitioner must be relegated to the remedy of pursuing Ext.P7 reply, already filed by him to the show cause notice, and getting the matter adjudicated before the 2nd respondent. Accordingly, without expressing any comment on the merits of the issue or with regard to the petitioners contentions with regard to limitation, I relegate the petitioner to the remedy of pursuing Ext.P6 show cause notice before the 2nd respondent and getting the matter adjudicated before him.

The writ petition, in its challenge against Ext.P6 show cause notice, is dismissed as not maintainable.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns/

