

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 23RD DAY OF DECEMBER 2015/2ND POUSHA, 1937

WP(C).No. 39450 of 2015 (E)

PETITIONER(S):

**FEMITHA NAZEER, KUNNAPPILLIL HOUSE,
HARITHA ROAD, EDAPPALLY SOUTH,
VENNALA P.O., ERNAKULAM-682 024,
REPRESENTED BY POWER OF ATTORNEY HOLDER
K.M. NAZEER.**

**BY ADVS.SRI.HARISANKAR V. MENON,
SMT.MEERA V.MENON.**

RESPONDENT(S):

- 1. THE SUPERINTENDENT OF CENTRAL EXCISE,
SERVICE TAX RANGE, CENTRAL EXCISE BHAVAN,
KATHRIKADAVU, KOCHI-682 017.**
- 2. COMMISSIONER OF CENTRAL EXCISE,
CUSTOMS & SERVICE TAX (APPEALS),
IS PRESS ROAD, ERNAKULAM, KOCHI-18.**
- 3. THE ASST. COMMISSIONER OF CENTRAL EXCISE,
CENTRAL EXCISE BHAVAN, KATHRIKADAVU,
KALOOR, KOCHI-17.**

**BY ADVS. SRI.SAIBY JOSE KIDANGOOR, SC,
SRI.THOMAS MATHEW NELLIMOOTTIL, SC.**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 23-12-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1 COPY OF THE ORDER ISSUED BY THE 1ST RESPONDENT
FOR THE PERIOD 2ND HALF 2012-13, 2013-14 AND HALF 2014-15
DATED 07/04/2015.
- EXT.P2 COPY OF THE APPEAL FILED BY THE PETITIONER BEFORE THE
2ND RESPONDENT DATED 30/09/2015.
- EXT.P3 COPY OF THE STAY APPLICATION FILED BY THE PETITIONER
BEFORE THE 2ND RESPONDENT DATED 30/09/2015.
- EXT.P4 COPY OF THE ORDER ISSUED BY THE 2ND RESPONDENT
DATED 07/12/2015.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C). No. 39450 of 2015

Dated this the 23rd day of December, 2015

JUDGMENT

The challenge in the writ petition is against Ext.P4 order passed by the 2nd respondent whereby, the 2nd respondent has rejected an appeal preferred by the petitioner against Ext.P1 communication, on the ground that Ext.P1 is not an adjudication order against which alone an appeal would lie before the 2nd respondent.

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

3. On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I find that Ext.P1 is only a letter issued by the Superintendent, informing the petitioner of a liability, as ascertained by the respondents in connection with the payment of service tax. It would appear that the petitioner construed Ext.P1 as an order and preferred an appeal against the same before the 2nd respondent. The 2nd respondent by Ext.P4 order rejected the appeal, stating that Ext.P1 order was not an adjudication order, against which alone an appeal

would lie before the 2nd respondent. I find merit in the stand taken by the 2nd respondent and I am of the view that Ext.P1 should be treated as a letter informing the petitioner of a liability, in respect of which the respondents propose to take action for recovery against the petitioner. The petitioner is free to respond to the said letter, if he disputes the liability, and the respondents shall thereafter, after considering the reply of the petitioner to Ext.P1 communication, decide on whether or not an adjudication proceedings must ensue through the issuance of the show cause notice to the petitioner.

The writ petition is disposed with the above directions.

Sd/-

A.K.JAYASANKARAN NAMBIAR
JUDGE