(2015) 09 KL CK 0025

In the High Court Of Kerala

Case No : W.P.(C) No. 11496 of 2015 (J)

ITC Freight Services Pvt. Ltd. APPELLANT

Vs

Commr. of C. Ex., Cus. & S.T., Cochin RESPONDENT

Date of Decision : 17-09-2015

Acts Referred:

Citation : (2015) 40 STR 887

Hon'ble Judges : A.K. Jayasankaran Nambiar, J.

Bench : Single Bench

Advocate : A. Kumar, P.J. Anil Kumar, G. Mini, P.S. Sree Prasad and V.B. Hari Narayanan, Advocates, for the Appellant; John Varghese, SC, for the Respondent

Judgement

A.K. Jayasankaran Nambiar, J.—The petitioner is a Private Limited Company engaged in C&F/CHA, Storage and Warehousing services, etc. The challenge in the writ petition is against Ext. P7 order of the 2nd respondent, whereby the 2nd respondent has confirmed a demand of service tax and penalty on the petitioner for the period from 1-7-2008 to 31-3-2013. Although various contentions have been raised in the writ petition against Ext. P7 order of the 2nd respondent, in particular, the plea regarding limitation, as also the propriety of confirming the demand of service tax based on Rules 5 and 6 or the Service Tax Valuation Rules, which according to the petitioner, has been declared ultra vires by the Hon''ble Delhi High Court, I am of the view that the petitioner has an effective alternate remedy against Ext. P7 order, by way of approaching the Customs, Excise and Service Tax Appellate Tribunal, through a duly constituted appeal under the Finance Act, 1994 as amended. Taking note of the fact that the proceedings that culminated in Ext. P7 order were initiated by a show cause notice dated 15-10-2013, which is well before the amendment dated 6-8-2014 in the Finance Act, 1994 which mandates that an appeal before the CESTAT must be accompanied by a fee of 7.5% of the tax amount demanded by the adjudication order, and the fact that this Court has in the decision dated 2-3-2015 in W.P.(C) No. 6173 of 2015 [Muthoot Finance Limited Vs. Union of India and Others] rendered in a case of an assessee similarly situated as the petitioner in the instant writ petition, made it clear that the appeal to be filed by the petitioner would be governed by the statutory provisions as they stood prior to the amendment introduced with effect from 16-8-2014, while dismissing the writ petition in its challenge against Ext. P7 order, I make it clear that, if the petitioner prefers a duly constituted appeal under the provisions of the Finance Act, 1994, as they stood prior to 16-8-2014, then the Appellate Tribunal shall number the appeal and consider the application, if any filed by the petitioner for waiver of pre-deposit and stay of recovery of amounts confirmed against him by Ext. P7 order, on merits, and thereafter proceed to hear the appeal itself in due course. The petitioner shall file the appeal, together with the application, if any, for waiver of pre-deposit and stay, before the Appellate Tribunal on or before 15-10-2015. Taking note of the interim order passed by the Division Bench of this Court in the writ appeal preferred against the judgment referred to above, I also make it clear that the petitioner shall file an undertaking before the CESTAT undertaking to pay the appeal fee as prescribed under Finance Act, 1994 in the event of the aforementioned judgment being reversed in further proceedings.

