(2015) 03 KL CK 0197

In the High Court Of Kerala

Case No : Writ Petition (C) No. 10068 of 2015 (G)

Jeevan Telecasting Corporation Ltd. APPELLANT

Vs

C.C.E., C. and S.T. RESPONDENT

Date of Decision : 30-03-2015

Acts Referred:

Citation : (2015) 320 ELT 63 : (2015) 51 GST 740 : (2015) 38 STR 1126

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

Bench : Single Bench

Advocate : Ramesh Cherian John, for the Appellant; Thomas Mathew Nellimoottil and Ranjith J. Koshy, SC''s, Advocates for the Respondent

Judgement

A.K. Jayasankaran Nambiar, J.—The challenge in the writ petition is against Ext. P6 order passed by the respondent confirming a demand of Service Tax and penalty on the petitioner. Although various contentions are raised against Ext. P6 order in the writ petition, I am of the view that against Ext. P6 order, the petitioner has an effective alternative remedy by way of filing an appeal before the Customs, Excise and Service Tax Appellate Tribunal in terms of the provisions of the Finance Act, 1994 as amended. The learned counsel for the petitioner would submit that as per the amendment effected to the Finance Act, 1994 with effect from 16-8-2014 Reference seems to 6-8-2014 : Editor, there is a requirement of depositing 7.5% of the tax amount confirmed against the petitioner as a pre-condition for maintaining the appeal before the Appellate Tribunal. It is citing this requirement, and contending that he does not have an efficacious alternate remedy, that the petitioner has approached this Court through the present writ petition.

2. I have heard the learned counsel for the petitioner and the learned Standing Counsel for the respondent.

3. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that, against Ext. P6 order the petitioner

has got an effective alternate remedy of filing an appeal before the Customs, Excise and Service Tax Appellate Tribunal. The only point that arises for consideration is whether the petitioner would have to deposit the amount of 7.5% of the tax confirmed against him, as a condition for pursuing the appellate remedy before the Tribunal. I note in this connection that recently, a Division Bench of the High Court of Telengana and Andhra Pradesh has taken a prima facie view that, inasmuch as the lis in question had commenced prior to the introduction of the amendment to the Finance Act, 1994, with effect from August 2014, the petitioner''s right of appeal as per the erstwhile provisions of law would not be affected by the provisions introduced by the amendment of 2014. Although not expressly referred to in the interim order dated 19-2-2015 passed by the High Court of Telengana and Andhra Pradesh in W.P. No. 3393/2015, the view seems to be consistent with the settled law that the institution of a suit carries with it an implication that all rights of appeal then in force are preserved to the parties thereto till the rest of the career of the suit and, further, that the right of appeal that is vested is to be governed by the law prevailing at the date of institution of the suit or proceeding, and not by the law that prevails at the date of its decision or at the date of filing of the appeal. (See : Garikapatti Veeraya Vs. N. Subbiah Choudhury, AIR 1957 SC 540 : (1957) 1 SCR 488 ; Hoosein Kasam Dada (India) Ltd. Vs. The State of Madhya Pradesh and Others, AIR 1953 SC 221 : (1983) 13 ELT 1277 : (1953) 4 SCR 987 Vitthalbhai Naranbhai Patel Vs. Commissioner of Sales Tax, M.P., Nagpur, AIR 1967 SC 344 : (1961) 12 STC 219 and Ramesh Singh and another Vs. Cinta Devi and others, (1996) 2 ACC 701 : (1996) ACJ 730 : (1996) 3 AD 376 : AIR 1996 SC 1560 : (1996) 5 JT 543 : (1996) 114 PLR 507 : (1996) 2 SCALE 782 : (1996) 3 SCC 142 : (1996) 2 SCR 1036 : (1996) 2 UJ 61 . In that view of the matter, I find that the petitioner, in whose case also the lis commenced in 2013, would not be required to deposit the amount of 7.5%, as required pursuant to the 2014 amendment, and in that respect, he would have an efficacious alternate remedy before the Tribunal where he can file an appeal, together with an application for waiver of pre-deposit and stay of recovery of the amounts confirmed against him by Ext. P6 order. At the time of filing the appeal, he will not be required to make any payment as a pre-condition for the hearing of the waiver application by the Tribunal. I, therefore, relegate the petitioner to the alternate remedy available under the Finance Act, 1994, as amended, of approaching the Appellate Tribunal by way of an appeal against Ext. P6 order. It is made 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 Reference seems to 6-8-2014 : Editor. Thus, without making any observations on the merits of the case, and without prejudice to all the contentions that the petitioner can take against Ext. P6 order of the respondent, I dismiss the writ petition in its challenge against Ext. P6 order.

4. 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 16-8-20141, on or

before 10-4-2015 then the Appellate Tribunal shall number the appeal, and consider the application filed by the petitioner for waiver of pre-deposit and stay of recovery of the amounts confirmed against him by Ext. P6 order, on merits, and thereafter, proceed to hear the appeal itself in due course. The writ petition is disposed of as above.

