(2015) 03 KL CK 0182

In the High Court Of Kerala

Case No : WP(C) No. 8883 of 2015 (I)

Keltron IT Business Group APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 20-03-2015

Acts Referred:

Citation : (2015) 03 KL CK 0182

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

Bench : Single Bench

Advocate : V. Abraham Markos, Binu Mathew, Tom Thomas, Abraham Joseph Markos, Isaac Thomas, Noby Thomas Cyriac, Advocates and Joseph Kodianthara, Senior Advocate, for the Appellant; Thomas Mathew Nellimoottil, SC, Advocates for the Respondent

Final Decision : Disposed off

Judgement

A.K. Jayasankaran Nambiar, J.—The challenge in the writ petition is against Ext. P6 order-in-original passed by the 2nd respondent, confirming a demand of service tax and penalty on the petitioner. The facts in the impugned order would reveal that the petitioner was engaged in the business of manufacturing and trading of electronic goods, which is under the purview of a BIFR sanctioned scheme. It would appear that the petitioner had mistakenly availed ineligible credit on input services amounting to Rs. 2.8 lakhs. On being informed that the petitioner was not eligible to the said credit, the petitioner immediately reversed the said credit. However, after reversing the same, on the ground that the petitioner had not maintained separate books of accounts for the credit availed, the 2nd respondent has demanded Rs. 14 crores along with equal penalty by Ext. P6 order. Ext. P6 order is impugned in the writ petition.

2. I have heard the learned senior counsel for the petitioner and the learned Standing counsel for the respondents. The learned Standing counsel for the respondents would point out that the petitioner has an effective alternative remedy against Ext. P6 order of the 2nd respondent, in that they can prefer an

appeal before the Customs, Excise and Service Tax Appellate Tribunal against the said order. It is pointed out that by virtue of the amendment that was introduced into the Finance Act, 1994, with effect from 16.08.2014, the petitioner is required to deposit only 7.5% of the tax amount confirmed against it, as a condition for preferring an appeal before the Appellate Tribunal.

3. I have considered the submissions of counsel on either side. I find that Ext. P6 is an order passed by the 2nd respondent, against which the petitioner has an alternate remedy under the provisions of the Finance Act, 1994, as amended to prefer 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, in as much 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 19.02.2015 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 16.08.2014. 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 2nd respondent, I dismiss the writ petition in its challenge against Ext. P6 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 16.08.2014, 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 as above.

