



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

WEDNESDAY, THE 13TH DAY OF DECEMBER 2023/22ND AGRAHAYANA, 1945

WA NO. 2138 OF 2023

AGAINST THE JUDGMENT WP(C) 4079/2023 OF HIGH COURT OF KERALA

APPELLANT/PETITIONER:

MITHLAJ. P.,
AGED 40 YEARS
S/O SAIDALAVI, PORUTHIYIL HOUSE, P.O. VALARA,
ADIMALI, PIN - 685561

BY ADVS.
ANIL SIVARAMAN
JOTHISHA K.A.
RAJI VINCENT
SREELEKHA. P

RESPONDENT/S:

- 1 THE COMMISSIONER OF CENTRAL TAX & CENTRAL EXCISE (APPEALS),
CENTRAL REVENUE BUILDING, I.S.PRESS ROAD, COCHIN,
PIN - 682018
- 2 ASSISTANT COMMISSIONER
CENTRAL TAX & CENTRAL EXCISE, IDUKKI DIVISION,
K.P.VARKEY'S MALL, 2ND FLOOR, ROTARY JUNCTION,
THODUPUZHA, PIN - 685584
- 3 SUPERINTENDENT OF CENTRAL GST & CENTRAL EXCISE
MUNNAR RANGE, TOP STATION ROAD, MUNNAR, PIN -



2023:KER:80132

WA No.2138/2023

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685612

OTHER PRESENT:

SC. ADV SREELAL N WARRIER

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
13.12.2023, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

**J U D G M E N T****Dr. Kauser Edappagath, J.**

The appellant is the writ petitioner. He is a businessman dealing in spices, herbals and other tourism-related activities. On 1/6/2020, the 3rd respondent issued Ext.P1 notice to the appellant stating that information provided by the Income Tax Department for the financial year 2016-17 indicates that the appellant received ₹2.42 crores for the services provided by him, but he did not pay service tax. The appellant was directed to provide the list of services he provided, and month-wise details of payment received for the services provided from April 2016 to June 2017, along with details regarding the income. The appellant did not respond to the notice. Hence, the 3rd respondent issued Ext.P2 reminder. The appellant gave Ext.P3 reply to Ext.P2 reminder. After that, the 3rd respondent issued Ext.P4 show cause notice to which the appellant gave Ext.P5 reply. Though an opportunity was given to the appellant for a personal hearing, he did not avail it. After considering the rival contentions, the 2nd respondent



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passed Ext.P6 order upholding charges in the show cause notice finding that the appellant is liable to pay an amount of ₹36,19,736/- towards service tax u/s 73(2) of the Finance Act, 1994 r/w section 174(2) of the CGST Act, 2017, interest u/s 75 of the Finance Act, 1994, penalty of ₹36,19,736/- equivalent to the service tax confirmed u/s 78 of the Finance Act, 1994 and further penalty of ₹10,000/- u/s 77 of the Finance Act, 1994 r/w Section 174(2) of the CGST Act, 2017. The appellant did not challenge the said order in appeal. Thereafter, the 2nd respondent issued Ext.P8 notice to the appellant's Bank u/s 87(b) of Chapter (V) of the Finance Act, 1994, directing the Bank not to permit any withdrawal from the accounts held by the appellant until the service tax liability is fully satisfied. Challenging Exts.P6 and P8, the appellant preferred the writ petition before the learned Single Judge. The learned Single Judge as per the impugned judgment dismissed the writ petition. It is challenging the said judgment; the appellant is before us.

2. We have heard Sri.Anil Sivaraman, the learned counsel for the appellant and Sri.Sreelal N.Warrier, the learned standing counsel for the respondents.



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3. The appellant did not challenge Ext.P6 order imposing service tax, interest and penalty by preferring statutory appeal. It has become final. Ext.P8 notice is in effect issued to enforce Ext.P6 order. Ext.P6 order has been passed after complying with all the statutory formalities and giving sufficient opportunity to the appellant for hearing. It cannot be said that Ext.P6 was passed without jurisdiction or without complying with the principles of natural justice. Without challenging Ext.P6 in appeal, the appellant cannot challenge the same in the writ petition. Hence, the challenge against Exts.P6 and P8 must fail.

4. The learned counsel for the appellant submitted that the appellant may be granted instalment facility to clear off the liability, and he may be permitted to operate the bank account on payment of the first instalment. The learned standing counsel for the respondents submitted that the Commissioner has the power to grant a maximum of 24 instalments.

5. Considering the facts and circumstances of the case and the present financial condition of the appellant, we are of the view that the appellant can be permitted to clear off the service tax liability by way of instalments. Hence, the following order is



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passed:

(i) The appellant shall make a payment of ₹25,00,000/- (Rupees Twenty-Five lakhs only) towards the service tax liability on or before 31st January, 2024.

(ii) On such payment, the respondents shall take steps to lift the freezing of the bank account and permit the appellant to operate his bank account.

(iii) The appellant shall pay the balance service tax liability in 24 equal monthly instalments w.e.f. 1st March, 2024.

(iv) If the appellant defaults on the payment of any of the instalments, the respondents will be free to proceed against the appellant to recover the entire due in accordance with law.

Writ appeal is disposed of as above.

Sd/-
DR. A.K.JAYASANKARAN NAMBIAR
JUDGE

Sd/-
DR. KAUSER EDAPPAGATH
JUDGE

Rp