



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

FRIDAY, THE 31ST DAY OF MAY 2024 / 10TH JYAISHTA, 1946

WA NO. 648 OF 2024

AGAINST THE JUDGMENT DATED 29.01.2024 IN WP(C) NO.41578 OF 2023
OF HIGH COURT OF KERALA

APPELLANTS/RESPONDENTS:

- 1 COMMISSIONER (APPEALS),
OFFICE OF THE COMMISSIONER (APPEALS),
CENTRAL TAX, CENTRAL EXCISE & CUSTOMS,
CENTRAL REVENUE BUILDING, I.S. PRESS ROAD,
KOCHI, PIN - 682018
- 2 JOINT COMMISSIONER,
OFFICE OF THE PRINCIPAL COMMISSIONER,
CENTRAL TAX AND CENTRAL EXCISE,
CENTRAL REVENUE BUILDING, I.S. PRESS ROAD,
KOCHI, PIN - 682018
- 3 DEPUTY COMMISSIONER,
OFFICE OF THE DEPUTY COMMISSIONER,
CENTRAL TAX AND CENTRAL EXCISE,
CENTRAL REVENUE BUILDING, I.S. PRESS ROAD,
KOCHI, PIN - 682018
- 4 ASSISTANT COMMISSIONER,
OFFICE OF THE ASSISTANT COMMISSIONER,
CENTRAL EXCISE, CUSTOMS & SERVICE TAX, 682017,
SERVICE TAX DIVISION, ENTRAL EXCISE BHAVAN,
KATHRIKADAVU, KALOOR, KOCHI, PIN - 682018

BY ADV J.VISHNU

RESPONDENTS/WRIT PETITIONER:

M/S. WESTERN INTERIOR DESIGNERS & MARINE CONTRACTORS,
27/1084 D, 1ST FLOOR, KARTHIKA APARTMENTS,
PANAMPILLY NAGAR, KOCHI - 682 036,
REPRESENTED BY ITS MANAGING PARTNER HISHAM BASHEER,
AGED 40 YEARS, S/O BASHEER KUTTY,



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RESIDING AT FLAT NO.G2, GALAXY CLIFFORD APARTMENT,
CHILAVANNOOR, BUND ROAD JUNCTION,
KADAVANTHRA, PIN - 682020

BY ADV SRI JOSE JOSEPH, SC

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
31.05.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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JUDGMENT

Dr. A.K.Jayasankaran Nambiar, J.

This Writ Appeal is filed by the respondents in WP(C). No.41578 of 2023, impugning the judgment dated 29.01.2024 of the learned Single Judge in the Writ Petition.

2. Briefly stated the facts necessary for the disposal of the Writ Appeal are that the writ petitioner had approached this Court aggrieved by the orders passed by the appellants herein, dismissing appeals preferred by the writ petitioner against Exts.P6 and P7 orders passed by the Deputy Commissioner of Central Tax and Central Excise confirming a demand of service tax on the respondent writ petitioner. The appellant Appellate Authority had dismissed the appeals preferred by the writ petitioner against Exts.P6 and P7 orders on the ground that the respondent writ petitioner had not paid the mandatory pre-deposit of 7.5% of the confirmed amounts of tax while preferring the appeals before the Appellate Authority. It was the case of the respondent writ petitioner in the Writ Petition that, prior to dismissing the appeal the appellants had not issued the respondent writ petitioner with any defect notice pointing out the defect of non-payment of the pre-deposit



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amount, and hence the dismissal of the appeals on that ground was erroneous in law.

3. The said contention of the respondent writ petitioner found favour with the learned Single Judge who proceeded to allow the Writ Petition by permitting the respondent writ petitioner to make the pre-deposit of 7.5% within a period of three weeks from the date of the judgment, and directing the appellant herein to restore Exts.P8 and P9 appeals against Exts.P6 and P7 orders before it and to decide the appeals expeditiously in accordance with the law.

4. The appellant Appellate Authority points out before us that the appellants had in fact served defect notices on the respondent writ petitioner, pointing out the defect of non-payment of the pre-deposit amount, and it was on account of the respondent writ petitioner not making the pre-deposit despite the defect notices that he was constrained to dismiss the appeals on the ground of non-payment of pre-deposit. The appellant, therefore, seeks to set aside the judgment of the learned Single Judge to the extent it directs the appellant to accept the pre-deposit amount and restore the appeals before it.

5. We have heard Sri. Vishnu Jayapalan, the learned counsel for



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the appellants and Sri.Jose Joseph, the learned Standing counsel for the respondent writ petitioner.

6. On a consideration of the rival submissions, while we find force in the submission of the learned counsel for the appellant that inasmuch as the requirement of pre-deposit is a statutory obligation cast upon an assessee who chooses to prefer an appeal before the Appellate Authority under the provisions of the Finance Act, 1994, as amended, as applicable to service tax, it was incumbent upon the respondent writ petitioner to have made the pre-deposit as a condition for maintaining the appeals before the Appellate Authority. In that sense, there was no obligation on the department to issue any defect notice to the assessee although it is a usual practice for the department to point this out to assesseees in the interests of fairness. In the instant case, not only did the assessee not pay the pre-deposit amount within the statutory period prescribed under the Act for maintaining the appeals before the Appellate Authority, but the appeals were also dismissed by the Appellate Authority only a year thereafter for non-payment of pre-deposit. In the meanwhile, although the appellant had communicated the defect of non-payment of pre-deposit through emails sent to the email address of the respondent writ petitioner, he had not chosen to effect the payment of the mandatory pre-deposit. Under the said



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circumstances, the directions of the learned Single Judge in the impugned judgment cannot be legally sustained.

7. We find, however, that pursuant to the impugned judgment of the learned single judge, and in compliance therewith, the respondent has effected the payment of the pre-deposit amount to maintain the appeals before the Appellate Authority, and the said amount of pre-deposit was duly accepted by the appellants without demur. It is thereafter that they have chosen to file this appeal. Under the said peculiar circumstances, where the pre-deposit amount has already been accepted by the appellant, and in that sense the directions issued by the learned Single Judge have already been complied with by the parties, we do not deem it necessary to upset the direction of the learned Single Judge with regard to the hearing of the appeals on merits by the appellant Appellate Authority. Thus, while the impugned judgment of the learned Single Judge is not legally sustained, and shall not operate as a precedent in future cases, under the peculiar circumstances obtaining herein, the directions issued by the learned Single Judge to hear Exts.P8 and P9 appeals on merits after restoring them to file, are not interfered with solely because we find that the appellant had chosen to comply with the directions of the learned Single Judge before filing this appeal by accepting the pre-deposit



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amount of 7.5% in both the statutory appeals referred above.

The Writ Appeal is disposed as above.

Sd/-

DR. A.K.JAYASANKARAN NAMBIAR
JUDGE

Sd/-
SYAM KUMAR V.M.
JUDGE

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APPENDIX OF WA 648/2024

PETITIONER ANNEXURES

Annexure A1 A TRUE COPY OF THE EMAIL SENT BY THE
COMMISSIONER OF APPEALS TO THE WRIT
PETITIONER DATED 25.07.2022

Annexure A2 A TRUE COPY OF THE EMAIL SENT BY THE
COMMISSIONER OF APPEALS TO THE WRIT
PETITIONER DATED 06.11.2022