2024:KER:19691

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

TUESDAY, THE 12TH DAY OF MARCH 2024 / 22ND PHALGUNA, 1945

WP(C) NO. 1049 OF 2023

PETITIONER/S:

M/S. KERALA STATE CONSUMER FEDERATION LTD.
38/934-A.B.C. MAVELI LANE, GANDHI NAGAR, KADAVANTHRA, ERNAKULAM REPRESENTED BY ITS MANAGING DIRECTOR MR.M.SALIM, PIN - 682020

BY ADVS.
A.KUMAR
JOB ABRAHAM
P.J.ANILKUMAR
G.MINI(1748)
P.S.SREE PRASAD

RESPONDENT/S:

COMMISSIONER OF CENTRAL TAX & CENTRAL EXCISE, CENTRAL REVENUE BUILDING, I.S PRESS ROAD KOCHI, PIN - 682018

BY ADV P.R.SREEJITH

OTHER PRESENT:

P. R. SREEJITH- SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 12.03.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner is the apex body of Consumer Co-operative Society in the State of Kerala. It is wholly owned and controlled by the Government of Kerala. It was issued with a show cause notice (Ext.P1) under the provisions of the Finance Act, 1994 (In short 'the 1994 Act') alleging that it has not paid or it had short paid the amount of service tax payable under the provisions of the 1994 Act. The petitioner contested the show cause notice. However by Ext.P3 order the respondent confirmed the demands in the show cause notice and called upon the petitioner to pay the sums set out in Ext.P3.

2. Sri. A. Kumar, learned Senior Counsel appearing for the petitioner on the instructions of Adv. G. Mini would submit that the petitioner did not get a proper opportunity to substantiate its case before the Adjudicating Authority. It is submitted that the audited accounts of the petitioner were not available at the time when the show cause notice was adjudicated. It is submitted that the same issue has been considered earlier in other adjudications where the issues have been answered in favour of the petitioner. It is submitted that the question of service tax liability of the petitioner on incentives and discounts was decided in favour of the petitioner and if this is taken into consideration a substantial portion of the demand in Ext.P3 order will be wiped out. It is submitted that the concluded issues are set out in paragraph 7 of the writ petition. It is submitted that the petitioner will be

satisfied if the matter is remanded for fresh consideration of the respondent.

3. The learned Standing counsel appearing for the Department would submit that Ext.P3 is an appealable order and no ground has been made out for interference under Article 226 of the Constitution of India. It is submitted that the claim of the petitioner that similar or substantially similar demands have been adjudicated in favour of the petitioner on earlier occasions is also a matter that can be considered by the Appellate Authority. It is submitted that the failure of the petitioner to produce audited balance sheet in support of its claim cannot be a ground to now state that the issue must be considered at the hands of this court under Article 226 of the Constitution of India and / or that the matter must be reconsidered by the respondent.

4. Having heard the learned Senior Counsel appearing for the petitioner and the learned Standing counsel for the respondent, I am of the view that in the facts and circumstances of the case the petitioner can be granted an opportunity to substantiate its case before the respondent. I am inclined to take such a view especially taking into account the submission of the learned Senior Counsel appearing for the petitioner that several of the matters upon which demands are now raised against the petitioner have been adjudicated in favour of the petitioner and also the fact that the audited

balance sheet of the petitioner could not be produced before the respondent at the time of adjudication. I also take note of the fact that the petitioner is an entity wholly owned by the Government of Kerala and the delay in producing the audited balance sheet was principally on account of the delay on the part of the statutory auditors under the provisions of the Kerala Co-operative Societies Act, 1969. Therefore, this writ petition will stand disposed of setting aside Ext.P3 order and restoring the adjudication of Ext.P1 show cause notice to the file of the respondent. The respondent shall pass fresh orders after affording an opportunity of hearing to the petitioner and after providing to the petitioner an opportunity to produce any further materials that it may rely upon. The petitioner or its authorised representative shall appear before the respondent at 11 a.m on 20-03-2024. Thereafter the matter shall be adjudicated afresh as directed above after providing to the petitioner an opportunity to produce additional materials, if any. Fresh orders shall be passed by the respondent within a period of 3 months from the date of receipt of a certified copy of this judgment.

Sd/-
GOPINATH P.
JUDGE

AMG

APPENDIX OF WP(C) 1049/2023

PETITIONER EXHIBITS

Exhibit P1	**TRUE COPY OF THE SHOW CAUSE NOTICE NO.138/2018-ST/COMMR. DATED 16.10.2018**
Exhibit P2	**TRUE COPY OF THE REPLY FILED BY THE PETITIONER DATED 22.11.2018**
Exhibit P3	**TRUE COPY OF THE ORDER-IN-ORIGINAL DATED 31.3.2022**
Exhibit P4	**TRUE COPY OF THE ORDER IN APPEAL NOS.193 TO 195/ST/CHN/2015 DATED 13.3.2018.**
Exhibit P5	**TRUE COPY OF THE SHOW CAUSE NOTICE NO.5/2015/ST DATED 23.1.2015 FOR THE PERIOD 2013-14**
Exhibit P6	**TRUE COPY OF THE SHOW CAUSE NOTICE SCN NO.77/2016 DATED 19.9.2016 FOR THE PERIOD 2014-15**
Exhibit P7	**TRUE COPY OF THE SHOW CAUSE NOTICE SCN NO.94/2018/ST/JC DATED 26.4.2018 FOR THE PERIOD JULY 2012- TO JUNE, 2017.**
Exhibit P8	**TRUE COPY OF THE SHOW CAUSE NOTICE SCN NO.180/2018-ST DATED 7.8.2018 FOR THE PERIOD 2015-16 AND 2016-17.**