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.

MONDAY, THE 25TH DAY OF MARCH 2024 / 5TH CHAITHRA, 1946

WA NO. 307 OF 2024

AGAINST THE JUDGMENT DATED 18.01.2024 IN WP(C) NO.5763 OF 2023 OF HIGH COURT OF KERALA

APPELLANT/PETITIONER:

M/S BRIGHT COMMUNICATIONS, AGED 18 YEARS
50/404 B, MRRA-6, MANIMALA ROAD, EDAPPALLY, KOCHI,
REPRESENTED BY ITS PARTNER MR. SHAJI K V, PIN – 682024

BY ADVS.
JAZIL DEV FERDINANTO
JOSE JACOB

RESPONDENTS/RESPONDENTS:

1 JOINT COMMISSIONER OF CENTRAL TAX AND CENTRAL EXCISE, O/O THE PRINCIPAL COMMISSIONER, CENTRAL TAX E, AND CENTRAL EXCISE, CENTRAL REVENUE BUILDING, I.S. PRESS ROAD, KOCHI, PIN – 682018

2 ASSISTANT COMMISSIONER (ADJ), O/O THE PRINCIPAL COMMISSIONER, CENTRAL TAX AND CENTRAL EXCISE, CENTRAL REVENUE BUILDING, I.S. PRESS ROAD, KOCHI, PIN – 682018

3 ADDITIONAL COMMISSIONER, O/O THE COMMISSIONER (AUDIT), CENTRAL TAX AND CENTRAL EXCISE, CENTRAL REVENUE BUILDING, I.S. PRESS ROAD, KOCHI, PIN – 682018

BY ADVS.PREETHA S.NAIR
SMT.PREETHA S. NAIR, SC,

BY PREETHA S NAIR, SC

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 25.03.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dr. A.K.Jayasankaran Nambiar, J.

This Writ Appeal was filed impugning the judgment dated 18.01.2024 of a learned Single Judge in WP(C).No.5763 of 2023. By the said judgment, the learned Single Judge had dismissed the Writ Petition finding that, inasmuch as the appellant herein had not responded to the show cause notice issued to the Department seeking payment of service tax for the period from 2012-2013 to 2016-2017, and further had not filed any statutory appeal against the adjudication order passed by the Assistant Commissioner, there was no ground for interfering with the adjudication order in the Writ Petition.

2. When the matter came up for admission before this Court, after arguing the matter for some time, the learned counsel for the appellant sought permission to prefer a rectification of mistake application before the Assistant Commissioner so as to rectify certain factual mistakes that are apparent in the adjudication order with a view to reducing the total liability confirmed against him. By a separate Interlocutory Application (I.A.No.3 of 2024), he has also produced the rectification application preferred by him, which is marked as Annexure P1. The limited prayer at this stage is for a direction to the Assistant Commissioner, before whom Annexure P1 application has been preferred, to consider and pass orders on the same expeditiously, after hearing the appellant.

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3. We have heard Sri.Jose Jacob, the learned counsel for the appellant and Smt.Preetha S. Nair, the learned counsel for the respondents.

4. Taking note of the submissions of the learned counsel for the appellant, as also the fact that a rectification application has been furnished before the Assistant Commissioner, and without pronouncing on the merits of the case, we allow the Writ Appeal to the limited extent of setting aside the judgment of the learned Single Judge so as to enable the Assistant Commissioner, before whom Annexure P1 rectification application has been preferred by the appellant herein, to consider the same on merits, by waiving the period of limitation for considering the same, and pass orders in accordance with law, within a period of two months from the date of receipt of a copy of this judgment. Needless to say, the Assistant Commissioner shall also afford a personal hearing to the appellant before passing final orders on the rectification application.

The Writ Appeal is disposed as above

Sd/-

DR. A.K.JAYASANKARAN NAMBIAR
JUDGE
Sd/-
SYAM KUMAR V.M
JUDGE

mns

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APPENDIX OF WA 307/2024

PETITIONER EXHIBITS

Exhibit P6	**TRUE COPY OF THE ST-3 RETURNS DATED 05.11.2018, 08.11.2028 AND 09.11.2018**
Exhibit P7	**TRUE COPY OF A STATEMENT PREPARED OF INVOICES IDENTIFIED BY THE APPELLANT AGAINST WHICH CENVAT CREDIT HAS BEEN CLAIMED FOR THE YEARS 2012-13, 2013-14 AND 2014-15**
Exhibit P8	**TRUE COPY OF PHOTOGRAPHS SHOWING THE INGRESS OF WATER INTO THE RESIDENCE OF THE APPELLANT DURING THE FLOODS**
Exhibit P9	**TRUE COPY OF THE BANK STATEMENT REFLECTING THE PAYMENT RECEIVED FROM THE PUNCHAYATH ON 07.09.2018 AS A COMPENSATION FOR FLOOD AFFECTED RESIDENTS**
Annexure P1	**TRUE COPY OF RECTIFICATION OF MISTAKE APPLICATION FILED ON 20.03.2023**