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T.C. KAUSHIK

v.

UNION OF INDIA AND ORS.

NOVEMBER 14, 2006

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[DR. AR. LAKSHMANAN AND ALTAMAS KABIR, JJ.]

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Service Law - Departmental proceedings - Initiation of - Government counsel distorted orders of court - Affidavit filed tendering unconditional apology for the lapse - However, High Court directing the Government to take action against the counsel and thereafter, departmental action initiated - On appeal, held: Since the apology tendered appears to be honest and genuine, no departmental action is to be taken against the counsel - Observations by High Court regarding lapse on the counsel's part set aside.

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High Court made certain observations in its order in a writ petition that the appellant-Government Counsel in his letter to the Government Department distorted orders of the court and thereafter, filed an affidavit tendering unconditional apology for the lapse on his part. However, High Court directed the Government to take appropriate action against the appellant and the Government initiated departmental action against him. Hence the present

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appeal.

Partly allowing the appeal, the Court

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HELD: On perusal of the affidavit filed by the appellant-Government Counsel tendering unconditional apology for the lapse on his part, the same appears to be honest and genuine, therefore, no further departmental action need be taken against the appellant. High Court ought to have accepted the apology tendered by the appellant instead of directing the Government to take appropriate action against the appellant pursuant to which the Government initiated departmental action against the appellant. Further, when the matter

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came up for hearing, this Court directed the respondents not to proceed with the departmental proceedings and the said order is still in force. Therefore, the observations made by the High Court in its order regarding lapse on the part of the appellant are set aside. [1154-G-H; 1155-A-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4941 of 2006.

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From the final Judgment and Order dated 22.6.2006 of the High Court of Judicature at Bombay in W.P. No. 994/2006. A

Arun Jaitley, Mukul Rohatgi, C.M. Jayakumar, Rameshwar Prasad Goyal for the Appellant.

Satish Pandey, Pankaj Kumar Singh and Medhavi Kumar for the Respondent No.3. B

Ajay Majithia, Rajesh Kumar and K.L. Janjani for the Respondent No.5.

R. Mohan, A.S.G., Mohan Parasaran, A.S.G., P. Parmeswaran, B. Krishna Prasad and T.V. Ratnam for U.O.I. C

The Judgment of the Court was delivered by

Dr. AR. LAKSHMANAN, J. Leave granted.

Heard Mr.Arun Jaitley, learned senior counsel appearing on behalf of the appellant and Mr.R.Mohan and Mr.Mohan Parasaran, learned ASG appearing on behalf of the respondents. D

We have perused the order passed by the High Court dt.22.06.2006 in Writ Petition No.994 of 2006 filed by M/s Aiges India Marketing Pvt.Ltd. against Union of India and another. We are not, in this case, concerned with the merits of the case put forward by the appellant or the respondents. We confine ourselves only to the observations made by the High Court in its order dt.22.06.2006 in para 11 and 12 against the appellant who was the advocate-on-record for Union of India. The observations made by the High Court in para 11 and 12 of its order reads thus :- E

"11. On 9th February, 2005, this Court simply adjourned the matter as the counsel for the revenue sought time to file an affidavit in reply of the Commissioner (Investigation). However, the Central Government Advocate in his letter dated 11th February, 2005, apart from making several incorrect statements quoted hereinabove, he has falsely stated that the court has granted interim relief in the matter. Today Mr.Rana, on instructions from Dr.Kaushik fairly states that our order dated 9th Feb, 2005 was not even annexed to the letter dated 11th February, 2005 as the same was not available on 11th February, 2005. It is unfortunate that the Central Government Advocate who is supposed to safeguard the interest of the Revenue should represent to the officers of the F

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A department that there is an interim order passed against the Revenue when in fact there is none. The conduct of Central Government Advocate is highly deplorable to say the least. Similarly, even the conduct of Mr.M.G.Rao, in filing an affidavit is totally contrary to the stand of the Customs Department set out in the affidavit in reply filed by the Joint Commissioner of Customs.

B 12. Dr.T.C.Kaushik who is personally present before us today has tendered unconditional apology and has filed an affidavit to that effect in writing on 27th March, 2006. In these circumstances, we leave it to the Revenue Secretary of the Central Government and to the C.B.E.C., New Delhi to take appropriate action as they deem fit against Dr.T.C.Kaushik and Mr.M.G. Rao.”

C The appellant-Dr.T.C.Kaushik filed an affidavit tendering his unconditional apology for the lapse on his part. The affidavit filed by him reads as follows :-

D “Affidavit of T.C. Kaushik”

1. I, Dr.T.C.Kaushik, Additional Government Counsel, having my office situated at Branch Secretariat, Ministry of Law and Justice, Government of India, Mumbai do hereby solemnly affirm and state as under :

E 2. At the outset I say that I have highest regard for this Hon’ble Court and its orders. There was no intention on my part to distort the facts. I had a *bona fide* desire to see that the Hon’ble Court’s orders are obeyed. I repeat and reiterate that I had no intention to distort the orders of this Hon’ble Court.

F 3. I further say that the contents of the letter dated 11.2.2005 addressed to Settlement Commissioner was partially not correct. I unconditionally tender my apology for the same. I pray that this Hon’ble Court be pleased to accept the same. Solemnly affirmed at Mumbai this 27th day of March, 2006.

G Deponent”

H We have perused the affidavit tendering unconditional apology. In our opinion, the affidavit of apology appears to be honest and genuine. The High Court ought to have accepted the apology tendered by the appellant instead

of directing the Revenue Secretary of the Central Government and the C.B.E.C., New Delhi to take appropriate action as they deem fit against Dr.T.C.Kaushik and Mr.M.G. Rao. Pursuant to the above direction, the Government of India has initiated departmental action against the appellant herein. We are, in this case, concerned ourselves only with Dr.T.C.Kaushik, the appellant herein. A

When the matter came up for hearing on 28.08.2006, this Court while ordering notice to the respondents however, directed the respondents, namely, Union of India and others not to proceed with the departmental proceedings. The said order is still in force. As already noticed, the apology tendered by the appellant appears to be honest and genuine and, therefore, in our opinion, no further departmental action need be taken against the appellant. We, therefore, set aside the observations made by the High Court in paras 11 and 12 of its order alone and allow the appeal to the said extent. However, we say that the appellant should be more careful in future while dealing with the matters like this entrusted to him by the Union of India. B C

The appeal stands allowed to the above extent. No costs. D

N.J.

Appeal Partly allowed.