**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE**

**FRIDAY, THE 19TH DAY OF JUNE 2015/29TH JYAISHTA, 1937**

**WP(C).No. 18402 of 2015 (A)**

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**PETITIONER :**

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**M/S. ABR ENGINEERS & PROJECT**
**MANAGEMENT CONSULTANCY PVT. LTD. ,**
**CC NO. 39/2720, DIWAN'S ROAD, KOCHI – 682 016**
**REPRESENTED BY ITS MANAGING DIRECTOR SMT DEVI AJIT**

**BY ADV. SRI.DALE P. KURIAN**

**RESPONDENTS :**

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1. **THE ADDITIONAL COMMISSIONER OF CENTRAL EXCISE**
   **COCHIN COMMISSIONERATE**
   **CENTRAL REVENUE BUILDINGS, KOCHI – 682 018.**

2. **THE JOINT COMMISSIONER OF CENTRAL EXCISE**
   **COCHIN COMMISSIONERATE**
   **CENTRAL REVENUE BUILDINGS, KOCHI – 682 018.**

3. **THE COMMISSIONER OF CENTRAL EXCISE**
   **CUSTOMS & SERVICE TAX (APPEALS), COCHIN COMMISSIONERATE**
   **CENTRAL REVENUE BUILDINGS, KOCHI – 682 018.**

4. **UNION OF INDIA**
   **REPRESENTED BY THE SECRETARY TO MINISTRY OF FINANCE**
   **NEW DELHI – 110 001.**

**R1 TO R3 BY ADVS. SRI.THOMAS MATHEW NELLIMOOTTIL, SC**
**SRI.TOJAN J. VATHIKULAM, SC**
**R4 BY ADV. SRI.N.NAGARESH, ASGI**
**BY ADV. P.L. VENUKUMAR, CGC**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 19-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**Mn**

**WP(C).No. 18402 of 2015 (A)**
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**APPENDIX**

**PETITIONERS' EXHIBITS :**
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**EXT. P1:-** TRUE COPY OF THE SHOW CAUSE NOTICE DTD. 27/2/2013 NO. 32/2013/ST.

**EXT. P2:-** TRUE COPY OF THE ASSESSMENT AND PENALTY ORDER DTD 31/12/2014.

**EXT. P3:-** TRUE COPY OF THE MEMORANDUM OF APPEAL IN FORM ST-4 DATED 27/4/2015.

**EXT. P4:-** TRUE COPY OF THE MEDIAL CERTIFICATE DTD. 27/4/2015.

**EXT. P5:-** TRUE COPY OF THE WAIVER PETITION DTD 27/4/2015.

**EXT. P6:-** TRUE COPY OF THE JUDGMENT DTD. 2/3/2015 IN WP(C) NO. 6173/2015 CITED MUTHOOT FINANCE LTD VS. UNION OF INDIA AND ANOTHER.

**RESPONDENT(S)' EXHIBITS : NIL**
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**//TRUE COPY//**

**P.A. TO JUDGE**

**Mn**

**A.MUHAMED MUSTAQUE, J.**

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W.P.(C).No.18402 of 2015

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Dated this the 19th day of June, 2015

**<u>J U D G M E N T</u>**

The petitioner as against the assessment order under service tax has preferred an appeal. The proceedings are relating to the period prior to the amendment of Finance Act, 2014. Therefore the petitioner submits that, the appeal shall be considered in accordance with the unamended provisions. The petitioner also filed an application for waiver of pre-deposit. It seems that the authority insists for mandatory payment of 7.5% based on amended provisions. The petitioner relies on the judgment of this Court in W.P.(C).No.6173/2015 and submits that, this Court already held that appeal relating to the proceedings based on unamended provisions shall be dealt in accordance with the unamended provisions.

2. The learned counsel for the Department submits that, they have already preferred an appeal against W.P.(C).No.6173/2015.

3. In the above circumstances, this writ petition is disposed of with the following directions :

The petitioner's appeal shall be considered in the light of unamended provisions subject to the outcome of the appeal challenging W.P.(C).No.6173/2015. In the event of judgment in

W.P.(C).No.6173/2015 is reversed by the Division Bench, necessarily the petitioner is bound by that judgment to pay the mandatory payment of 7.5%.

Sd/-
**A.MUHAMED MUSTAQUE, JUDGE.**

AV