

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

WEDNESDAY, THE 15TH DAY OF JULY 2015/24TH ASHADHA, 1937

WP(C).No. 21243 of 2015 (E)

PETITIONER :

**M/S. EDUSMART SERVICES PVT LIMITED.,
DOOR NO.XIII/442, N.H 47, BYPASS ROAD,
KUMBALAM, ERNAKULAM -682 506,
REPRESENTED BY ITS AUTHORIZED SIGNATORY SHIBU RASHEED.**

**BY ADVS.SRI.V.DEVANANDA NARASIMHAM
SRI.P.H.RIYAS**

RESPONDENT(S):

- 1. THE INTELLIGENCE OFFICER,
(INVESTIGATION BRANCH), COMMERCIAL TAXES,
CIVIL STATION ANNEX, ALAPPUZHA - 688 011.**
- 2. THE ASSISTANT COMMISSIONER (ASSESSMENT),
SPECIAL CIRCLE-III, COMMERCIAL TAX COMPLEX,
ERNAKULAM - 682 015.**
- 3. THE DEPUTY COMMISSIONER,
COMMERCIAL TAXES, THEVARA, ERNAKULAM -682 015.**

BY SR GOVERNMENT PLEADER SMT. SOBHA ANNAMMA EAPEN

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 15-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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APPENDIX

PETITIONER(S)' EXHIBITS

- P1: TRUE COPY OF CERTIFICATE OF REGISTRATION DATED 17/02/10 ISSUED BY THE COMMERCIAL TAX OFFICER, KVAT CIRCLE-II, TRIPUNITHURA.
- P2: TRUE COPY OF ANNUAL RETURN DATED 5/2/11 E-FILED BY PETITIONER FOR THE YEAR 2009-10.
- P3: TRUE COPY OF PENALTY ORDER DATED 14/1/2015 ISSUED BY 1ST RESPONDENT TO PETITIONER
- P4: TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN WPC NO.3828/2015 DATED 6/2/2015.
- P5: TRUE COPY OF APPEAL/REVISION PETITION DATED 9/2/2015 FILED BEFORE 3RD RESPONDENT
- P6: TRUE COPY OF ARGUMENT NOTE DATED 28/2/2015 FILED WITH EVIDENCES BEFORE 3RD RESPONDENT WHILE URGING STAY PETITION
- P7: TRUE COPY OF CONDITIONAL STAY ORDER DATED 5/3/15 ISSUED BY 3RD RESPONDENT
- P8: TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN WPC NO.9687/2015 DATED 26/3/2015.
- P9: TRUE COPY OF ARGUMENT NOTE WITHOUT EXTS DATED 19/5/2015 AND A COPY OF TRIPARTITE AGREEMENT FILED BEFORE 3RD RESPONDENT BY PETITIONER
- P10: TRUE COPY OF COUNTER ARGUMENT FILED BY 1ST RESPONDENT BEFORE 3RD RESPONDENT
- P11: TRUE COPY OF CONDITIONAL STAY ORDER DATED 23/5/2015 ISSUED BY 3RD RESPONDENT TO THE PETITIONER
- P12: TRUE COPY OF THE JUDGMENT REPORTED IN 2000 (8) KTR 55
- P13: TRUE COPY OF THE JUDGMENT REPORTED IN (2007) (8) RC (SC)
- P14: TRUE COPY OF THE JUDGMENT REPORTED IN (2009) 22 VST 529.
- P15: TRUE COPY OF THE JUDGMENT REPORTED IN 2014 (2) KLT 715.
- P16: TRUE COPY OF THE JUDGMENT REPORTED IN (2015) 23 KTR 195
- P17: TRUE COPY OF THE JUDGMENT REPORTED IN (2015) 23 KTR 169.

RESPONDENT(S)' EXHIBITS:

NIL

/TRUE COPY/

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P.S.TO JUDGE

A.MUHAMED MUSTAQUE, J.

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W.P. (C) .No.21243/2015

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Dated this the 15th Day of July, 2015

J U D G M E N T

The petitioner has approached this Court impugning Ext.P11 conditional order of stay in a revision petition.

2. In fact, the petitioner had earlier challenged Ext.P7 conditional order of stay before this Court in W.P. (C) .No.9687/2015 and this Court by Ext.P8 judgment directed to reconsider the matter. Thereafter, the present impugned order is passed. The present order imposes 30% of the outstanding demand. The total demand is around Rs.65 lakhs.

3. The petitioner points out that in Ext.P7 order, the condition imposed was to remit an amount

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of Rs.10 lakhs only and on reconsideration of the order, the Authority has enhanced the amount to be remitted as 30% of the demand.

4. Consideration of the stay application is not finality of the issues, it has to be agitated before the Authorities. The condition imposed on the stay application is based on the facts involved in the appeal and taking note of the contentions of the petitioner, this Court while exercising power of judicial review only need to examine whether the legality of the process has been subserved while passing such order. The discretionary power exercised by the Appellate Authority is based on the merit, after adverting to the principles of natural justice. This Court cannot find fault with the order of the Appellate Authority. Therefore, this Court cannot interfere with the imposition of the condition.

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5. Thus, only question remains with regard to the quantum imposed by the Appellate Authority. As pointed out by the learned counsel for the petitioner that the earlier condition imposed was to remit Rs.10 lakhs and it has been now enhanced to 30% of the demand which is around Rs.20 lakhs. I am of the view that in interest of justice the petitioner shall deposit an amount of Rs.10,00,000/- (Rupees ten lakhs only). The condition imposed in Ext.P11 is modified accordingly. Rs.10 lakhs shall be deposited in two equal monthly instalments commencing from 10/08/2015.

The writ petition is disposed of as above. No costs.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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