

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 21ST DAY OF JULY 2015/30TH ASHADHA, 1937

W.P(C).No. 21699 of 2015(J)

PETITIONER:

ACCELERATED FREEZE DRYING CO. LTD. AGED 47 YEARS
AMALGAM HOUSE, BRISTOW ROAD
WILLINGTON ISLAND COCHIN-682 003
REPRESENTED BY THE VICE PRESIDENT

BY ADV.SRI.C.K.KARUNAKARAN
SRI.JOPHY POTHEN KANDANKARY

RESPONDENTS:

1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TAXES DEPARTMENT
PUBLIC OFFICES BUILDING, THIRUVANANTHAPURAM 693 033
2. DEPUTY COMMISSIONER (APPEALS) II,
DEPARTMENT OF COMMERCIAL TAXES,
SALES TAX COMPLEX, KOTTAYAM 686 001.
3. AGRICULTURAL INCOME TAX & COMMERCIAL TAXES OFFICER,
OFFICER OF THE AIT & CTO, EZHUPUNNA
ALAPPUZHA - 688 548.

BY SR. GOVT. PLEADER, SMT.SOBHA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
21.07.2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P(C)No.21699/15(J)

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: TRUE COPY OF THE OERDER DT. 29/6/15 PASSED BY 2ND RESPONDENT
IN STAY PETITION IN APPEAL NO KVATA (ALPY) 175/15

EXT.P2: TRUE COPY OF THE OERDER DT. 29/6/15 PASSED BY 2ND RESPONDENT
IN STAP PETITION IN APPEAL NO KVATA (ALPY) 147/15

EXT.P3: TRUE COPY OF THE OERDER DT. 29/6/15 PASSED BY 2ND RESPONDENT
IN STAP PETITION IN APPEAL NO KVATA (ALPY) 126/15

EXT.P4: TRUE COPY OF THE ANNUAL RETURN DATED 29.06.2015

EXT.P5:TRUE COPY OF THE JUDGMENT DT. 8/4/14 IN WPC NO 4102/14

RESPONDENTS' EXHIBITS: Nil

//TRUE COPY//

PA TO JUDGE

PtK/

A.MUHAMED MUSTAQUE, J.

W.P.(C).No.21699 of 2015

Dated this the 21st day of July, 2015

J U D G M E N T

The petitioner impugning conditional order passed in the motion of stay has approached this Court.

2. The main ground of challenge is that, for the assessment year 2014-15, the petitioner is entitled for refund of more than ₹ 8.5 lakhs and therefore the conditional order is liable to be varied. The learned counsel for the petitioner submits that, the total amount to be deposited is 1/3rd of the amount ordered by the appellate authority, which is around ₹13.7 lakhs.

3. The learned Government Pleader opposes the prayer of the petitioner and submits that, the assessment is not completed and refund will be considered only after finalisation of the assessment and therefore, the petitioner cannot claim adjustment of the amount due to them.

4. Taking note of the overall facts and circumstances I am of the view that, the conditional order has to be modified. Accordingly, the impugned order is modified. The petitioner shall deposit an amount of ₹7,00,000/- (Rupees Seven lakhs only) within three weeks from today. The petitioner shall abide by all other conditions in the stay order.

This writ petition is disposed of as above.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE.