

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

WEDNESDAY, THE 22ND DAY OF JULY 2015/31ST ASHADHA, 1937

WP(C).No. 21996 of 2015 (Y)

PETITIONER(S) :

**RIYA HOLIDAYS,
1ST FLOOR, THARIANS BUILDING, ATLANTIS,
M.G ROAD, COCHIN-15,
REPRESENTED BY ITS AUTHORISED SIGNATORY.**

**BY ADVS.SRI.SHAJI THOMAS
SRI.BINU PAUL
SRI.GEORGE PULIKUTHIYIL
SRI.B.RAJESH (KOTTAYAM)**

RESPONDENT(S) :

- 1. UNION OF INDIA,
MINISTRY OF FINANCE, REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF REVENUE, NORTH BLOCK, NEW DELHI-110 001.**
- 2. COMMISSIONER OF CENTRAL EXCISE,
CUSTOMS & SERVICE TAX(APPEALS-II),
CR BUILDING, I.S.PRESS ROAD, COCHIN-18.**
- 3. THE DEPUTY REGISTRAR,
CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
FKCCI BUILDING, K.G.ROAD, BANGALORE-560 009.**
- 4. THE REGISTRAR,
CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK 2, R.K PURAM, NEW DELHI-110 022.**
- 5. THE CENTRAL BOARD OF EXCISE AND CUSTOMS,
MINISTRY OF FINANCE, DEPARTMENT OF REVENUE,
CENTRAL REVENUE BUILDINGS, L.P ESTATE,
ITO NEW DELHI-110 002**

**BY ADVS. SRI.JOHN VARGHESE, S.C
SRI.THOMAS MATHEW NELLIMOOTTIL, S.C**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 22-07-2015, ALONG WITH W.P(C).NO.21997 OF 2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS :

EXHIBIT P1: TRUE COPY OF THE SHOW CAUSE NOTICE DATED 30-03-2009.

EXHIBIT P2: TRUE COPY OF THE SHOW CAUSE NOTICE DATED 20-08-2009.

EXHIBIT P3: TRUE COPY OF THE ORDER-IN-ORIGINAL DATED 21-12-2009.

EXHIBIT P4: TRUE COPY OF THE SHOW CAUSE NOTICE DATED 02-09-2010.

EXHIBIT P5: TRUE COPY OF THE SHOW CAUSE NOTICE DATED 14-08-2012.

**EXHIBIT P6: TRUE COPY OF THE COMMON ORDER IN APPEAL
DATED 29-05-2015.**

EXHIBIT P7: TRUE COPY OF DECISION REPORTED AT 2015-VIL-141-KER-ST.

**EXHIBIT P8: TRUE COPY OF THE ORDER DATED 19-02-2015 IN
W.P.(C).NO. 3393/2015 REPORTED AT 2015-TIOL-511-HC-AP-CX.**

**EXHIBIT P9: TRUE COPY OF THE ORDER DATED 30-03-2015 IN
W.P.(C).NO.7175 (W) OF 2015.**

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.MUHAMED MUSTAQUE, J.

W.P.(C).Nos.21996 & 21997 of 2015

Dated this the 22nd day of July, 2015

J U D G M E N T

The petitioners in both the writ petitions have approached this Court aggrieved by the insistence of pre deposit of 10% of the amount for filing an appeal before the CESTAT.

2. According to the petitioners, these appeals had arisen prior to amendment to Section 35 of the Finance Act, 1994. Therefore, in the light of judgment of this Court in ***M/s. Muthoot Finance Limited v. Union of India and others [2015-VIL-141-KER-ST]***, the CESTAT cannot demand insistence of pre deposit of 10%.

3. The learned Standing Counsel for the respondents submits that, the said judgment is subjected to an appeal and the same is pending.

Considering the facts and circumstances, these writ petitions are disposed of with the following directions :

1. The petitioners shall give an undertaking before the CESTAT to the effect that, in the event of judgment of this Court in Muthoot Finance Case is being reversed in the appeal, they will deposit 10% of the amount as required under Section 35F of the CESTAT.
2. If the petitioners comply with the above condition, the appeals filed by the petitioners shall be entertained and

W.P.(C).Nos.21996 & 21997 of 2015

2

considered in accordance with law without insisting for
10% of the pre deposit.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE.

AV