

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

THURSDAY, THE 6TH DAY OF AUGUST 2015/15TH SRAVANA, 1937

WP(C).No. 23722 of 2015 (M)

PETITIONER(S) :

**MS. DAS BUILDERS,
NELLIKODE, N.H BYE PASS, KOZHIKODE,
REPRESENTED BY MANAGING PARTNER SHAM SUDHEER DAS.**

**BY ADVS.SRI.P.RAGHUNATH
SRI.PREMJIT NAGENDRAN**

RESPONDENT(S) :

- 1. COMMERCIAL TAX OFFICER (W.C),
OFFICE OF THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES,
KOZHIKODE- 673 005.**
- 2. ASSISTANT COMMISSIONER (APPEALS)
COMMERCIAL TAXES, KOZHIKODE- 673 005.**

BY SR.GOVERNMENT PLEADER SMT.SHOBA ANNAMMA EAPEN

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 06-08-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Msd.

WP(C).No. 23722 of 2015 (M)

APPENDIX

PETITIONER(S)' EXHIBITS :

**EXHIBIT P1: PHOTOCOPY OF ASSESSMENT ORDER FOR 2010-11
DATED 12.01.2015.**

EXHIBIT P2: PHOTOCOPY OF APPEAL FILED AGAINST EXHIBIT P1 ORDER.

**EXHIBIT P3: PHOTOCOPY OF STAY PETITION FILED ALONG WITH EXHIBIT P2
APPEAL.**

**EXHIBIT P4: PHOTOCOPY OF THE ORDER PASSED ON EXHIBIT P3 STAY
PETITION DATED 26.06.2015.**

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A. MUHAMED MUSTAQUE, J.

W.P(C). No. 23722 of 2015

Dated this the 6th day of August, 2015

J U D G M E N T

The petitioner challenging conditional order in the stay application in an appeal, has approached this Court. The main contention of the petitioner is that, the question raised by the petitioner relating to the rate of tax was not adverted by the appellate authority while imposing condition. Therefore it is submitted that the conditional order is vitiated for non-application of mind. Petitioner also submits that the condition imposed is too excessive and that, it has no nexus for the reason for imposing condition.

2. I have gone through the impugned order. It is to be noted that the order imposing condition is not an order passed after final hearing. Therefore there is no infirmity with the order imposing condition.

3. However taking note of the over all facts and circumstances, this Court is of the view that the condition imposed has to be modified as payment of ₹4,00,000/-. Accordingly the petitioner is directed to remit an amount of ₹4,00,000/- (Rupees four lakhs only) on or before 25.08.2015. Petitioner shall abide by all other conditions.

Sd/-

A. MUHAMED MUSTAQUE, JUDGE.