

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

THURSDAY, THE 20TH DAY OF AUGUST 2015/29TH SRAVANA, 1937

WP(C).No. 25546 of 2015 (P)

PETITIONER :

**SAJAD,
STAR ICE CREAM PARLOUR,
KARAVALOOR, KOLLAM -691 333.**

**BY ADVS.SRI.S.SANTHOSH KUMAR
SMT.P.LISSY JOSE.**

RESPONDENT(S):

- 1. THE DEPUTY COMMISSIONER, (APPEALS II),
COMMERCIAL TAXES, ASRAMOM,
KOLLAM -691 002.**
- 2. THE COMMERCIAL TAX OFFICER,
COMMERCIAL TAXES, ANCHAL, KOLLAM -691 306.**

BY SR GOVERNMENT PLEADER SMT. SOBHA ANNAMMA EAPEN

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 20-08-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1. COPY OF THE ASSESSMENT ORDER DATED 6.6.15 FOR THE YEAR 2013-14.
- EXHIBIT P2. COPY OF THE PENALTY ORDER DATED 7.6.15 FOR THE YEAR 2013-14.
- EXHIBIT P3. COPY OF THE APPEAL DATED 1.7.15 CHALLENGING THE ASSESSMENT ORDER.
- EXHIBIT P4. COPY OF THE APPEAL DATED 1.7.15 CHALLENGING THE PENALTY ORDER.
- EXHIBIT P5. COPY OF THE STAY PETITION DATED 1.7.15 FILED IN EXT P3 APPEAL.
- EXHIBIT P6. COPY OF THE STAY PETITION DATED 1.7.15 FILED IN EXT P4 APPEAL.
- EXHIBIT P7. COPY OF THE INTERIM ORDER DATED 27.7.15 PASSED BY THE IST RESPONDENT.
- EXHIBIT P8. COPY OF THE INTERIM ORDER DATED 27.7.15 PASSED BY THE IST RESPONDENT.

RESPONDENT(S)' EXHIBITS:

NIL

/TRUE COPY/

P.A.TO JUDGE

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A.MUHAMED MUSTAQUE, J.

W.P.(C) No.25546 of 2015

Dated this the 20th day of August, 2015

JUDGMENT

The petitioner, challenging conditional orders in the stay applications filed in appeals as against the penalty and assessment orders, has approached this Court.

2. The petitioner submits that the assessment itself is based on an addition made by the Assessing Authority on turnover without any basis. It is further submitted that his turnover is less than Rs.60 lakhs and therefore, would not have any liability to pay tax. It is argued that the assessment made by mechanical order cannot be a reason to impose a condition in the stay application as against the appeal.

3. The petitioner's contentions have been adverted by the Appellate authority. The sustainability of the contentions can only be decided at the time of final hearing. Therefore, there is no infirmity with the conditional orders.

However, taking note of the facts and circumstances, this Court is of the view that the conditional orders have to be modified as payment of Rs.1 lakh each (total Rs.2 lakhs). The petitioner shall pay the above amount in two equal monthly instalments. The first instalment shall be paid on or before 5.9.2015 and the second instalment shall be paid on or before 5.10.2015.

The writ petition is disposed of as above.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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