

**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. 25549 of 2015 (P)**  
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**PETITIONER(S) :**  
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- 1. DHANESH KUMAR KURUNGAT,  
S/O.K.GOVINDAN, KUMAR NIVAS, KADAVATHOOR P.O.,  
THALASSERY, KANNUR DISTRICT.**
- 2. SHAJU KALLAI KANNOTH  
S/O.BHASKARAN, BRAITE HOUSE/SREE VALSAM, KUTTIKUNNU  
NIRMALAGIRI P.O., KOOTHUPARAMBA, KANNUR DISTRICT.**
- 3. SHIBIN KRISHNA,  
S/O.BALAKRISHNAN, NEELIYULLA PARAMBATH,  
CHEMARATHOOR P.O., VADAKARA, KOZHIKODE.**

**BY ADV. SRI.K.PRAVEEN KUMAR**

**RESPONDENT(S) :**  
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- 1. UNION OF INDIA  
REPRESENTED BY ITS SECRETARY, MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE, NORTH BLOCK,  
NEW DELHI-110 001.**
- 2. THE COMMISSIONER OF CUSTOMS (APPEAL)  
C.R.BUILDING, I.S.PRESS ROAD, KOCHI -682 018**
- 3. THE JOINT COMMISSIONER OF CENTRAL EXCISE  
CALICUT COMMISSIONERATE, CALICUT - 673 001.**
- 4. THE SUPERINTENDENT OF CUSTOMS  
AIR INTELLIGENCE UNIT, CALICUT INTERNATIONAL AIRPORT  
MALAPPURAM - 673 001.**

**BY ADV. SRI.N.NAGARESH, ASGI  
BY ADV. SRI.THOMAS MATHEW NELLIMOOTTIL, SC  
BY ADV. SRI.P.NANDAKUMAR (CLT)**

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

**Mn**

**...2/-**

APPENDIX

PETITIONERS' EXHIBITS :

- EXT. P1 - TRUE COPY OF THE SHOW CAUSE NOTICE ISSUED TO THE 1ST AND 2ND PETITIONERS DATED 04.03.2014.
- EXT. P1(a) - TRUE COPY OF THE SHOW CAUSE NOTICE ISSUED TO THE 1ST AND 2ND PETITIONERS DATED 04.03.2014.
- EXT. P2 - TRUE COPY OF THE REPLY GIVEN BY THE 2ND PETITIONER.
- EXT. P2(a) - TRUE COPY OF THE REPLY GIVEN BY THE 3RD PETITIONER.
- EXT. P2(b) - TRUE COPY OF THE REPLY GIVEN BY THE 1ST PETITIONER.
- EXT. P3 - TRUE COPY OF THE ORDER DATED 31.12.2014 ISSUED TO THE 1ST AND 2ND PETITIONERS.
- EXT. P3(a) - TRUE COPY OF THE ORDER DATED 31.12.2014 ISSUED TO THE 1ST AND 3RD PETITIONERS.
- EXT. P3(b) - TRUE COPY OF THE RELEVANT EXTRACT OF THE PASSPORT OF THE 1ST PETITIONER.
- EXT. P4 - TRUE COPY OF THE APPEAL PREferred BEFORE THE 2ND RESPONDENT BY THE 1ST AND 2ND PETITIONERS.
- EXT. P4(a) - TRUE COPY OF THE APPEAL PREferred BEFORE THE 2ND RESPONDENT BY THE 1ST AND 3RD PETITIONERS.
- EXT. P5 - TRUE COPY OF THE APPLICATION FILED FOR WAIVING THE PAYMENT OF PRE-DEPOSIT AND STAYING THE IMPUGNED ORDER BY THE 1ST AND 2ND PETITIONERS.
- EXT. P5(a) - TRUE COPY OF THE APPLICATION FILED FOR WAIVING THE PAYMENT OF PRE-DEPOSIT AND FOR STAYING THE IMPUGNED ORDER BY THE 1ST AND 3RD PETITIONERS.
- EXT. P6 - TRUE COPY OF THE NOTICE ISSUED BY THE 2ND RESPONDENT DATED 26.06.2015 TO THE 1ST AND 2ND PETITIONERS.
- EXT. P6(a) - TRUE COPY OF THE NOTICE ISSUED BY THE 2ND RESPONDENT DATED 26.06.2015 TO THE 1ST AND 3RD PETITIONERS.
- EXT. P7 - TRUE COPY OF THE JUDGMENT IN WPC. NO.6173 OF 2015.

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

**A. MUHAMED MUSTAQUE, J**

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**W.P.(C).No. 25549 of 2015**  
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**Dated this the 20<sup>th</sup> day of August, 2015**

**JUDGMENT**

The petitioner, as against Ext.P3 assessment order, has preferred an appeal. Ext.P4, P4(a) are the appeals. The petitioner also filed a waiver application of free deposit. The petitioner submits that since the proceedings are relating to the period prior to amendment to the Finance Act in the year 2014, without insisting free deposit, the appeal shall be entertained.

2. The petitioner relies on Ext.P7 judgment of this Court in W.P.(C).No.6173/2015 dated 02.03.2015.

3. The learned Standing Counsel submits that the Department has already challenged the judgment in W.P.(C).No.6173/2015 before a Division Bench of this Court. In that view of the matter, the following directions are issued :

The appeal shall be entertained without insisting of free deposit in accordance with the unamended provisions on an undertaking by the petitioner that in the event of Muthoot's

case is being reversed by this Court, the petitioner shall deposit 7.5% of the amount as per the amended provisions. In view of the above, the demand for free deposit is set aside.

Sd/-

**A. MUHAMED MUSTAQUE, JUDGE**

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