

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 9TH DAY OF SEPTEMBER 2015/18TH BHADRA, 1937

WP(C).No. 27209 of 2015 (A)

PETITIONER(S):

**M/S.MUZIRIS INDUSTRIAL CO-OPERATIVE SOCIETY LTD.
MUNAMBAM PORT AREA, PALLIPORT P.O., ERNAKULAM
REPRESENTED BY ITS' PRESIDENT MR.GIRISH P.P.**

**BY ADVS.SRI.A.KUMAR
SRI.P.J.ANILKUMAR
SMTG.MINI(1748)
SRI.P.S.SREE PRASAD**

RESPONDENT(S):

- 1. COMMISSIONER OF CENTRAL EXCISE (APPEALS)
COCHIN COMMISSIONERATE, C.R.BUILDING, I.S.PRESS ROAD
COCHIN 682018.**
- 2. JOINT COMMISSIONER OF CENTRAL EXCISE
CUSTOMS & SERVICE TAX, COCHIN COMMISSIONERATE
C.R.BUILDING, I.S.PRESS ROAD, COCHIN-682018.**

**R BY SRI.THOMAS MATHEW NELLIMOOTTIL,SC,CB EX
R BY SRI.JOHN VARGHESE, SC.**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
09-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

WP(C).No. 27209 of 2015 (A)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT-P1: TRUE COPY OF THE ORDER DATED 18.12.2014.

EXHIBIT-P2: A TRUE COPY OF THE APPEAL DATED 17/06/2015.

**EXHIBIT-P3: TRUE COPY OF THE APPLICATION FOR DISPENSING WITH PRE
DEPOSIT.**

EXHIBIT-P4: A TRUE COPY OF THE NOTICE DATED 18.8.2015.

RESPONDENT(S)' EXHIBITS: NIL

//TRUE COPY//

P.S. TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.27209 OF 2015 (A)

Dated this the 9th day of September, 2015

J U D G M E N T

Against Ext.P1 order confirming a demand of service tax and penalty on the petitioner, the petitioner has preferred Ext.P2 appeal and Ext.P3 petition for dispensing with the pre-deposit and grant of stay, before the 1st respondent. It is the case of the petitioner that even prior to considering the stay petition, recovery steps are sought to be pursued for recovery of the amounts confirmed by Ext.P1 order.

2. I have heard the learned counsel appearing for the petitioner and also the learned Standing counsel appearing for the respondents.

3. On a consideration of the facts and circumstances of the case as also the submissions made across the Bar, I dispose the writ petition with the following directions:

1. The 1st respondent shall consider and pass orders on Ext.P2 appeal within a period of four months from the date of receipt of a copy of this judgment, after hearing the petitioner.

2. I make it clear that, till such time as orders are passed by the 1st respondent, as directed, and communicated to the petitioner, coercive steps for recovery of amounts confirmed against the petitioner by Ext.P1 order, shall be kept in abeyance.

3. Taking note of the judgment of this Court in W.P.(C).No.6173/2015 **[M/s.Muthoot Finance Ltd. v. Union of India]**, the petitioner will, for the time being, be exempted from payment of the mandatory pre-deposit amount for maintaining the appeal before the 1st respondent. This, however, shall be subject to the petitioner furnishing an undertaking before the 1st respondent that, in the event of the aforesaid decision being reversed by a higher forum, the petitioner will pay the statutory pre-deposit amount applicable to the respondents.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp