IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

THURSDAY, THE 2ND DAY OF JULY 2015/11TH ASHADHA, 1937

C.E.Appeal.No. 2 of 2015 ()

AGAINST THE FINAL ORDER IN APPEAL NO.E/1073/2006-DB OF CUSTOMS, EXCISE & SERVICE TAX APP.TRIBUNAL, SOUTH ZONAL BENCH, BANGALORE DATED 16-06-2014.

APPELLANT(S):

M/S. SUNTEC TYRES LIMITED,
ASWATHY APARTMENTS, P.T.MANUAL ROAD,
OPP. GIRIJA THEATRE, THIRUVAMBADY P.O.,
THRISSUR-680 020 REPRESENTED BY ITS MANAGING DIRECTOR,
MR..T.G.RAVEENDRANATHAN

BY ADVS.SRI.JOSEPH KODIANTHARA (SR.)
SRI.V.ABRAHAM MARKOS
SRI.BINU MATHEW
SRI.TOM THOMAS (KAKKUZHIYIL)
SRI.ABRAHAM JOSEPH MARKOS
SRI.ISAAC THOMAS
SRI.NOBY THOMAS CYRIAC

RESPONDENT(S):
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1. THE COMMISSIONER OF CENTRAL EXCISE, CUSTOMS AND SERVICE TAX,
   CENTRAL REVENUE BUILDING,
   MANANCHIRA, KOZHIKODE-673 001.

2. THE COMMISSIONER OF CENTRAL EXCISE,
   CUSTOMS AND SERVICE TAX, CENTRAL REVENUE BUILIDNG,
   I.S. PRESS ROAD, KOCHI-682 018.

3. THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
   1ST FLOOR W.T.C BUILDING, FKCCI COMPLEX, KG.ROAD.,
   BANGALORE-560 009.

BY ADV. SRI.THOMAS MATHEW NELLIMOOTTIL, SC, CB EX

THIS CENTRAL EXCISE APPEAL HAVING BEEN FINALLY HEARD ON 02-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.T.O.

C.E. APPEAL NO.2 OF 2015

APPENDIX

APPELLANT'S ANNEXURES:

ANNEXURE-A:	TRUE COPY OF COMPLETE SET OF THE APPEAL PAPER BOOK IN APPEAL NO.E/1073/2006-DB FILED BEFORE THE 3RD RESPONDENT.
ANNEXURE-B:	CERTIFIED COPY OF FINAL ORDER NO.20980/2014 DATED 16.06.2014 PASSED BY THE 3RD RESPONDENT TRIBUNAL IN APPEAL NO.3/1073/2006-DB.

RESPONDENTS' ANNEXURES: NIL

//TRUE COPY//

P.S. TO JUDGE

St/-

ANTONY DOMINIC
&
SHAJI P. CHALY, JJ.
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C.E.Appeal No.2 of 2015

Dated this the 2nd day of July, 2015

JUDGMENT

Antony Dominic, J.

Heard the learned Senior Counsel for the appellant and the learned Standing Counsel for the Respondents.

2. This appeal is filed against the Final Order in Appeal No.E/1073/2006-DB dated 16.06.2014 of the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Bangalore. By the said order, the Tribunal upheld the order passed by the Additional Commissioner of Central Excise & Customs, Calicut, confirming demand of Rs.24,63,036/- being the Cenvat credit wrongly availed and utilised under Rule 12 of Cenvat Credit Rules, 2002 r/w Sec.11A of Central Excise Act, 1944.

3. Reading of the order shows that though on merits the Tribunal's order is unassailable, one of the complaints of the appellant was that since show cause notices issued on 09.02.2004 and 13.09.2004 were prior to Finance Act, 2005,

allowing similarly situated assessees instalment facility to repay the credit irregularly availed by them, the appellant did not get such a facility to discharge the liability in instalments. However, the Tribunal declined to go into this contention, but afforded the appellant an opportunity to make this claim before the original authority for consideration on merits.

4. Having considered the issue in its totality, we feel that if other assessees who are similarly situated did get an opportunity to discharge the liability in instalments as provided in the Finance Act, 2005, there is no reason to deny such a facility to the appellant for the only reason that the proceedings against the appellant commenced prior to the amendment.

5. Therefore, while we confirm the order passed by the Tribunal, we direct that it would be open to the appellant to move the original authority claiming parity in treatment in the matter of instalment facility, and if such an application is made within four weeks from the date of receipt of a copy of this judgment, the original authority shall consider the request on merits and pass orders thereon.

The appeal is disposed of accordingly.

Sd/-

ANTONY DOMINIC
JUDGE

Sd/-
SHAJI P. CHALY
JUDGE

//true copy//

P.S. to Judge

St/-