IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 12TH DAY OF MAY 2015/22ND VAISAKHA, 1937

WP(C).No.14344 of 2015 (P)

PETITIONER:

M/S.HI-LITE BUILDERS PRIVATE LIMITED,
G-1003,BUSINESS PARK,HILITE CITY,
THONDAYAD JN.,GA COLLEGE P.O.,CALICUT-14.

BY ADVS.SRI.M.P.SHAMEEM AHAMED
SRI.S.K.SAJU

RESPONDENT'S:
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1. THE COMMISSIONER,
(CENTRAL EXCISE,CUSTOMS AND SERVICE TAX),
CALICUT COMMISSIONERATE,C.R.BUILDING,
MANANCHIRA,CALICUT-673 001.

2. THE CUSTOMS AND SERVICE TAX APPELLATE TRIBUNAL
(CESTAT),BANGALORE BENCH,FIRST FLOOR,
WTC,FKCCI COMPLEX,KEMPEGOWDA ROAD,
BANGALORE-560 009.

3. UNION OF INDIA,REPRESENTED BY SECRETARY,
MINISTRY OF FINANCE,UDYOGAMANDAL,
NEW DELHI-110 011.

R1-R3 BY SRI.THOMAS MATHEW NELLIMOOTTIL,SC,CB EXCISE

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 12-05-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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WP(C).No.14344 of 2015 (P)

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1:TRUE COPY OF THE SAID SCN DATED 28/8/2013.

EXT.P2:TRUE COPY OF THE ACKNOWLEDGEMENT DATED 16/12/2013 BY THE FIRST RESPONDENTS OFFICE FOR THE REPLY FILED BY THE PETITIONER.

EXT.P3:TRUE COPY OF THE ORDER - IN CHARGE DATED 16/1/2015.

EXT.P4:TRUE COPY OF THE APPEAL AND STAY APPLICATION FILED BY THE PETITIONER BEFORE THE TRIBUNAL.

EXT.P5:TRUE COPY OF THE ACKONWELEDGEMENT DATD 6TH MAY 2015 GIVEN BY THE OFFICE OF ASST. REGISTRAR, TRIBUNAL DIRECTING THE PETITIONER TO PRODUCE PROOF OF PRE-DEPOSIT.

RESPONDENT'S EXHIBITS: NIL

//TRUE COPY//

P.S. TO JUDGE

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A. MUHAMED MUSTAQUE, J.

W.P.(C) No.14344 of 2015
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Dated this the 12th day of May, 2015

JUDGMENT

The petitioner preferred an appeal before the 2nd respondent, aggrieved by Ext.P3 order. Petitioner has approached this Court seeking a direction to the 2nd respondent to admit and number the appeal and stay application, without insisting for the pre-deposit of 7.5% of the disputed tax imposed as per Ext.P3 proceedings initiated by virtue of Section 35 of the Central Excise Act, 1944. According to the petitioner, they are not liable to pay pre-deposit of 7.5% of the disputed tax. The petitioner relies on judgment of this Court in **Muthoot Finance Limited v. Union of India in WP No.6173 of 2015.**

2. Learned Standing Counsel opposed the prayer and submits that the department is preferring an appeal against the judgment in WP No.6173/2015.

3. Considering the facts and circumstances, the following directions are issued:

The 2nd respondent is directed to receive the appeal without insisting payment of 7.5% of disputed tax on undertaking that in the event, the writ appeal being allowed against the judgment in **Muthoot's case (supra),** they shall make deposit of 7.5% of disputed tax and penalty. All coercive steps against the petitioner pursuant to Ext.P3 order shall be kept in abeyance for a period of two months.

The Writ Petition is disposed of.

Sd/-
A. MUHAMED MUSTAQUE,
JUDGE

JV