IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.8.2015.

CORAM

THE HON'BLE MR.JUSTICE V.RAMASUBRAMANIAN
AND
THE HON'BLE MR.JUSTICE T.MATHIVANAN

C.M.A.No.1875 of 2015

The Erode Milk Consumers
Co-operative Society Ltd.,
rep. by the Special Officer,
No.838, E.V.N.Road (Mettur Road),
Erode 638 009. ... Appellant

Vs.

The Commissioner of Customs and
Central Excise,
No.1, Foulks Compounds,
Annai Medu, Salem 636 001. ... Respondent

Civil Miscellaneous Appeal against the final order No.40188/2014 dated 20.3.2014 in Appeal No.ST/753/2010-DB on the file of the Customs, Excise & Service Tax Appellate Tribunal, South Zonal Bench, Chennai.

For appellant : Mr.S.Sivanandam

For Respondent : Mr.V.Sundareswaran,
Senior Panel Counsel

JUDGMENT

(Judgment of the Court was delivered by V.RAMASUBRAMANIAN, J.)

This appeal arises out of an order passed by the CESTAT, dismissing the appeal of the appellant on the ground of non-compliance with a conditional order.

2. Heard Mr.S.Sivanandam, learned counsel for the appellant. Mr.V.Sundareswaran, learned Senior Panel Counsel takes notice for the respondent.

3. In an appeal filed by the appellant before the CESTAT, the Tribunal granted stay on 17.7.2012 on condition that the appellant makes a pre-deposit of 50% of the service tax within a period of eight weeks. The appellant came on appeal to this court and this court modified the order of the Tribunal and reduced the condition to 25% of the service tax demand. Though the appellant complied with the conditional order, as modified by this court, there was a delay in making the deposit. On the ground that the Tribunal cannot extend the time fixed by this court for making deposit, the Tribunal has dismissed the appeal forcing the appellant to come up with this appeal.

4. As per the order of this court dated 2.1.2014, the appellant ought to have made a deposit of 25% of the service tax within eight weeks. The order copy was delivered on 7.1.2014. The time limit expired on 7.3.2014. But, the appellant made a deposit on 18.3.2014 due to some wrong calculation. The appellant is a Milk Consumer Co-operative Society. Therefore, interest of justice demands that time limit for compliance should be extended and the deposit already made should be treated as proper compliance. In view of the above, the appeal is allowed. The order of the Tribunal is set aside. The deposit made by the appellant on 18.3.2014 is treated as satisfactory compliance by extending the period. The Tribunal shall take up the appeal and dispose of the same in accordance with law.No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

ssk. Sub Assistant Registrar

To

1. The Customs, Excise & Service Tax
   Appellate Tribunal,
   South Zonal Bench, Chennai.

2. The Commissioner of Customs and
   Central Excise,
   No.1, Foulks Compounds,
   Annai Medu, Salem 636 001.

C.M.A.No.1875 of 2015

GP(CO)
CA(30/09/2015)