**IN THE HIGH COURT OF JUDICATURE AT MADRAS**
**Dated : 14.07.2017**
**Coram**

## The Hon'ble Mr.Justice T.S.Sivagnanam

**Writ Petition No.30342 of 2004 and**
**W.P.M.P.No.36800 of 2004**

M/s. Jaya Diagnostic and Research Centre Ltd.,
rep. by its Managing Director,
Mr.B. Kameswara Rao. ...Petitioner

Vs.

1. The Customs, Excise and Service Tax, Appellate Tribunal, South Zonal Bench, Shastri Bhawan, First Floor, No.26, Haddows Road, Chennai.

2. The Commissioner of Customs (Seaport) Customs House, No.60,Rajaji Salai, Chennai - 600 001. ...Respondents

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for records of the impugned final order No.470 of 2004, dated 9.6.2004, passed by the first respondent, Tribunal and to quash the same and to direct the Tribunal to restore the appeal and hear the same on merit without insisting for pre-deposit of Rs.8,50,000/-.

For Petitioner : Mr. Hari Radhakrishnan
For Respondents : Mr.T.Pramod Kumar Chopda
Standing Counsel (for Income Tax)

**O R D E R**

Heard Mr. Hari Radhakrishnan learned counsel appearing for the petitioner, and Mr.T.Pramod Kumar Chopda, learned Standing Counsel (Income Tax) for the respondents.

2. The petitioner has filed this Writ Petition, challenging the order passed by the first respondent/Customs, Excise Service Tax Appellate Tribunal (CESTAT), dismissing the petitioner's Appeal for non-compliance of Section 129 (E) of the Customs Act. By order, dated 01.01.2004, the petitioner was directed by the CESTAT to pre-deposit a sum of Rs.8,50,000/- out of total amount of Rs.17,00,000/- within a period of three months.

3. At the time, when the Writ Petition was entertained, no interim order was granted, and it is submitted by the learned counsel appearing for the petitioner that, as against the order, withdrawing the exemption granted in favour of the petitioner, the petitioner moved the Hon'ble High Court of Andhra Pradesh, by way of filing a Writ Petition, and the same was dismissed, and the Petitioner's Appeal before the Hon'ble Supreme Court was allowed and the matter was remanded back to the first respondent/CESTAT for fresh decision, and the learned counsel does not have any instructions as

to what happened thereafter. In any event, the impugned order herein is an order, dismissing the petitioner's Appeal for non-compliance of pre-deposit order. If there is no subsequent developments in favour of the petitioner, then, the petitioner is granted liberty to move CESTAT by way of appropriate interim application. If the same is done, CESTAT shall consider such application on merits and in accordance with law and dispose of the same.

4. With the above observations, the Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

**14.07.2017**

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To

1. The Customs, Excise and Service Tax,
   Appellate Tribunal, South Zonal Bench,
   Shastri Bhawan, First Floor,
   No.26, Haddows Road,Chennai .
2. The Commissioner of Customs (Seaport)
   Customs House,
   No.60,Rajaji Salai, Chennai - 600 001.



**<u>T.S.Sivagnanam, J.</u>**

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**Writ Petition No.30342 of 2004**

**14.07.2017**