

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 05.08.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P.No.14483 of 2009
and
M.P.No.1 of 2009

M/s.V M Retreads,
Rep. by its Partner
S M Madeshwaran,
Salem High Road, Iveli Village,
Mavelipaalayam (PO),
Sankari, Salem District.Petitioner

Vs

1. Asst. Commissioner of Central Excise,
Erode II Division,
No.81, Bharathi Nagar - Choolai,
Erode - 638004.
2. Commissioner of Central Excise (Appeals),
1, Foulukas Compound, Anaimeedu,
Salem - 636001.Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, to call for the impugned proceedings of the 2nd respondent passed in A.No.299/2008 in Order-in-Appeal No.58/2009 ST (SLM) dated 18.03.2009 and quash the same.

For Petitioner: Mr.N.Murali

For Respondents: Mr.S.Rajasekar, JSC

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O R D E R

As against the Order-in-Original dated 07.04.2008, the petitioner herein had filed an appeal before the 2nd respondent on 08.11.2008 with a delay. The 2nd respondent, by relying upon certain decisions of the High Court as well as the Tribunal, had held that the Appellate Authority does not have the powers to condone the delay in filing the appeal beyond the period prescribed in the statute and on the ground of having preferred

the appeal belatedly, the appeal came to be rejected through an order dated 18.03.2009.

2. It is no doubt true that the 2nd respondent, being the Appellate Authority, may not be empowered to condone the delay in filing the appeal beyond the statutory period of 3 months and as such, the impugned order passed by the Appellate Authority, namely the 2nd respondent herein on 18.03.2009, cannot be strictly found fault with. Nevertheless, the writ petitioner herein has also challenged the Order-in-Original, in which he has raised several points touching upon the merits of the case.

3. This Court in various circumstances, had entertained writ petitions of this nature, wherein, the delay in filing an appeal before the Commissioner of Appeals has been condoned and liberty was granted to the dealers to file an appeal within a stipulated period, by invoking its powers under Article 226 of the Constitution of India. Since on a prima facie view, the petitioner may have certain arguable points before the Appellate Authority, this Court is inclined to take a lenient view and afford an opportunity to the petitioner to agitate his rights before the Appellate Authority.

4. In the light of the above observations, the order dated 18.03.2009 passed by the 2nd respondent in Appeal No.58/09, is set aside. Consequently, the delay on the part of the petitioner in filing the appeal against the Order-in-Original No.26/08 dated 07.04.2008 is hereby condoned and the matter is remanded back to the 2nd respondent, who shall dispose of the Appeal No.58/09, on its own merits and in accordance with law, as expeditiously as possible.

5. Accordingly, the Writ Petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

सत्यमेव जयते Sd/-

Assistant Registrar

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Sub Assistant Registrar

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To

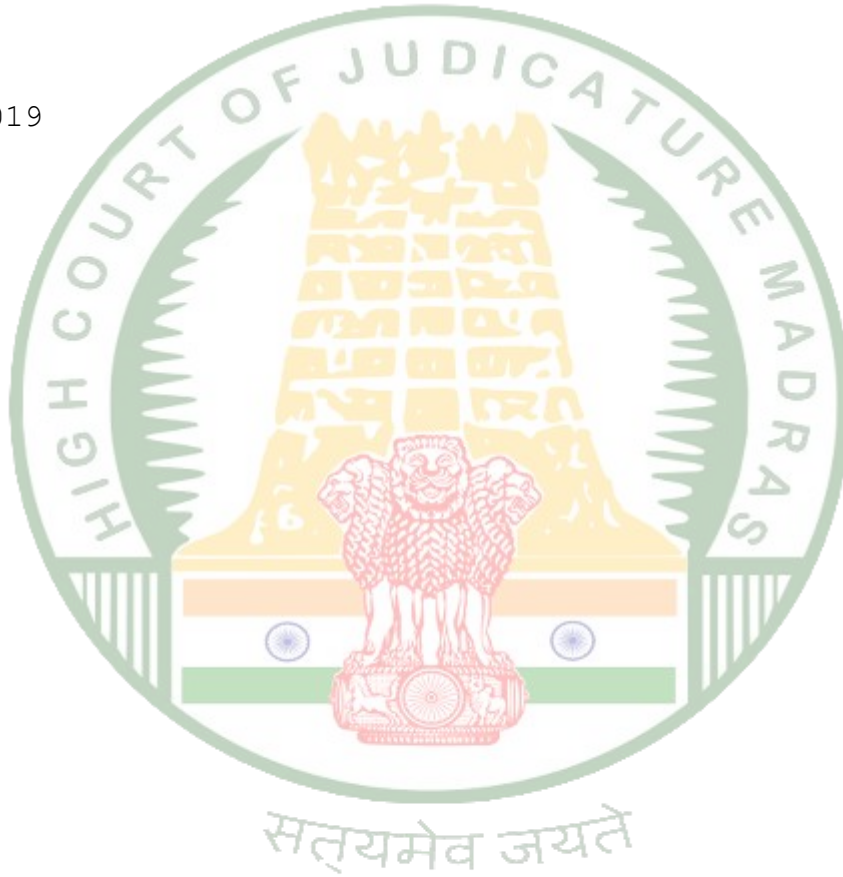
1. Asst. Commissioner of Central Excise,
Erode II Division,
No.81, Bharathi Nagar - Choolai,
Erode - 638004.

2. Commissioner of Central Excise (Appeals),
1, Foulukas Compound, Anaimeedu,
Salem - 636001.

+1 cc to Mr.N.Murali Advocate sr66863
+1 cc to Mr.S.Rajasekar Advocate sr66926

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