



C.M.A.(MD)No.577 of 2015

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

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**DATED: 08.04.2022**

**CORAM:**

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN**

**AND**

**THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR**

**C.M.A(MD)No.577 of 2015**

**and**

**M.P.(MD) No.1 of 2015**

M/s.St. John CFS Part Pvt. Ltd.,

Harbour Express Road,

Tuticorin - 620 008.

... Appellant /Petitioner

Vs.

1.The Commissioner of Central Excise,

Central Revenue Building,

NGO A Colony,

Tirunelveli.

2.The Custom, Excise and Service Tax,

Appellate Tribunal,

South Zonal Bench, 1st Floor,

No.26, Haddows Road,

Chennai - 600 006.

... Respondents/Respondents



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**PRAYER:** Civil Miscellaneous Appeal filed under Section 35G of the Central Excise Act, 1944, praying this Court to set aside the Final Order No.40651/2014, dated 13.10.2014 passed by the Customs, Excise and Service Tax Appellate Tribunal, Chennai.

For Appellant : Mr.K.Vaitheeswaran  
For Respondents : Mrs.S.Ragavendhre  
Jr. Standing Counsel

### **JUDGMENT**

**R.SUBRAMANIAN, J.**  
**AND**  
**N.SATHISH KUMAR, J.**

This appeal is directed against the final order No.40651/2014 of the Customs, Central Excise and Service Tax Appellate Tribunal, dated 13.10.2014, dismissing the appeal filed by the appellant for non-compliance of the conditions imposed for grant of stay.

2. By an order, dated 14.06.2013, the appellant company was directed to make a pre-deposit of Rs.20,00,000/- (Rupees Twenty Lakhs only) and report compliance on 02.08.2013. At that relevant point of time, an application for merger of the appellant company with M/s.St.John Freight System Limited, was pending.



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3. Taking note of the pendency of the merger proceedings, the parent company namely, M/s.St.John Freight System Limited, deposited the money as directed by the conditional order. The Tribunal has refused to accept such deposit as a proper compliance with conditional order passed, because both the companies had separate service tax registration. It now turns out that the parent company, which has deposited a sum of Rs.20,00,000/- (Rupees Twenty Lakhs only) pursuant to the interim order is under liquidation. The appellant cannot be penalized for the error. The appellant has to be given an opportunity to have its appeal heard on merits.

4. No doubt, the Tribunal was justified in concluding that the deposit by the parent company, which had a separate service tax registration, cannot be taken as a proper compliance, at the same time, the order of the Tribunal imposing a condition has been complied with an ends, we find that such a rigid view would only result in the appeal being thrown out on a technical ground, thereby, resulting a denial of opportunity to the appellant.



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5. We therefore, direct the payment made by the parent company to be taken as a payment made by the appellant company for the purposes of the compliance with the interim order alone. We therefore, set aside the order of the Tribunal. The appeal is restored to file. The Tribunal is requested to dispose the appeal on merits.

6. With the above direction, this Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

**[R.S.M., J.] & [N.S.K., J.]**  
**08.04.2022**

Index: Yes/No  
Internet: Yes/No  
rm



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