**(2013) 07 KL CK 0009**

**In the High Court Of Kerala**

**Case No :** W.P. (C) No. 23799 of 2011 (Y)

Commissioner of C. Ex. APPELLANT

Vs

Cell Tours and Travels Pvt. Ltd. RESPONDENT

**Date of Decision :** 04-07-2013

**Acts Referred:**

**Citation :** (2014) 34 STR 574

**Hon'ble Judges :** V. Chitambaresh, J

**Bench :** Single Bench

## Judgement

V. Chitambaresh, J.—All that the Customs, Excise and Service Tax Appellate Tribunal has done by Ext. P9 order is to restore the appeals dismissed for default owing to the failure to comply with the order on the applications for waiving the pre-deposit. The Tribunal has in essence extended the time for pre-deposit in terms of the proviso to Section 35F of the Central Excise Act, 1944 and restored the appeals dismissed for default. The source for that power can be easily traced to Rule 41 of the Appellate Tribunal (Procedure Rules). The Tribunal had thought it fit to allow the application to waive the pre-deposit on deposit of Rs. 10,00,000/-. The Tribunal has now exercised its discretion in extending the time for pre-deposit and restoring the appeal dismissed for non-compliance of the condition imposed. Such discretionary orders exercised by the Tribunal are not to be interfered with under Article 227 of the Constitution of India which is sought to be invoked by the petitioner in the instant case. The enlargement of time sought for by the petitioner does not exceed ten months and every endeavour shall be made to have a lis disposed of on merits. I am not prepared to hold by any stretch of imagination that the Tribunal has exceeded its jurisdiction in restoring the appeals for disposal on merits later. I however direct the Tribunal to dispose of Appeal Nos. ST/510-511/2009 [ 2010 (19) S.T.R. 114 ] as expeditiously as possible and at any rate within a period of two months.

2. The Writ Petition is dismissed.