IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.760 of 2009

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Umesh Prasad, son of Vyas Prasad of M/s. Kuber Bhandar, resident of Kaurihar Chowk, P.S Raxaul, Distt- East Champaran

.... Appellant

Versus

1. The Union of India through its Secretary, Ministry of Finance, New Delhi
2. The Commissioner of Customs, Patna

.... Respondents

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Appearance :

For the Appellant/s : Mr. N.K.Agrawal, Sr.Advocate with Mr. D.N.Tiwari, Advocate

For the Customs : Mr. Nivedita Nirvikar, Sr.Standing Counsel with Mr.Deepak Kumar Mishra,Advocate

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

11 06-04-2015 Heard learned counsel for the appellant and learned counsel for the respondent Customs Department.

The appeal has been filed against the order dated 14.10.2009 passed by the Customs, Excise & Service Tax Appellate Tribunal, Kolkata by which the appellant has been directed to pay 10% of the penalty imposed for maintaining the appeal within a period of eight weeks and on deposit of the said amount pre-deposit of remaining amount of penalties were waived and recovery of the same was stayed during the pendency of the appeal.

The appeal itself was filed against an adjudication order under Section 114 of the Customs Act under which penalties were imposed upon the appellant of Rs.30,00,000/- apart from penalties ranging from Rs.70,00,000/- to Rs.20,000/- in the case of six other persons.

Learned counsel for the appellant submits that so far as the present appellant is concerned, he was not found to be connected in any way with M/s. Kuber Bhandar situated at Raxaul which was the owner of the said pulses having purchased in the local market and only on the statement of the driver of the trucks during investigation that they were directed to stand near petrol pump for getting further instructions from the appellant and another person, the appellant has been also imposed the aforesaid penalty.

Learned counsel for the respondent Customs Department opposes the aforesaid stand stating that the order has been passed giving substantial relief to the appellant and exempting from depositing 100% of the penalty which is required under the law.

The only issue raised before us by learned counsel for the appellant is that the Tribunal has not considered the question of undue hardship caused to the appellant by such deposit of Rs.3 lacs which is a very substantial amount and the appellant ought to be heard by the Tribunal waiving the entire amount of penalty and ultimately if the penalty is upheld then the appellant in any case would be liable to the same.

On a consideration of the aforesaid submissions, we do not find that the Tribunal had in the given facts and circumstances acted in a manner contrary to the requirement of Section 129E of the Customs Act which empowers it to dispense with the deposit subject to such conditions as it may impose so to safeguard the interest of revenue. We rather find that the Tribunal had granted substantial relief to the appellant directing him to deposit only 10% of the penalty amount upon which rest of the penalty had been stayed.

We, thus, do not find that any illegality has been committed by the Tribunal. We are also unable to find any substantial question of law which arises in the present matter. In the given facts and circumstances, the appeal is, accordingly, dismissed.

It is, however, directed that on the appellant depositing the aforesaid amount, as directed by the Tribunal, within a period of eight weeks from today, the appeal shall be heard by the Tribunal on its merits.

(Ramesh Kumar Datta, J)

(Anjana Mishra, J)

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