IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 18TH DAY OF FEBRUARY 2015/29TH MAGHA, 1936

WP(C).No. 5061 of 2015 (G)

PETITIONER(S):

M/S.SEA BREEZE COURIER,
REPRESENTED BY ITS PROPRIETOR RASHID ALI,
REGD. OFFICE E-1, 38/2377/B2, FIRST FLOOR,
SOUTH STAR APARTMENT (ANNEX),
NEAR KSRTC BUS STAND, COCHIN - 682 035.

BY ADV. SRI.C.P.MOHAMMED NIAS.

RESPONDENT(S):

COMMISSIONER OF CENTRAL EXCISE
CUSTOMS & SERVICE TAX,
P.B. NO. 13, I.C.E. BHAVAN,
PRESS CLUB ROAD,
THIRUVANANTHAPURAM - 695 001.

BY SRI.THOMAS MATHEW NELLIMOOTTIL, SC ,CB EXCISE.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 18-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rvs.

APPENDIX

PETITIONER(S)' EXHIBITS :

EXHIBIT P1: **TRUE COPY OF THE LICENCE ISSUED TO THE PETITIONER UNDER THE COURIER REGULATIONS.**

EXHIBIT P2: **TRUE COPY OF THE LETTER DATED 2.1.2013 ISSUED BY THE OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE AND CUSTOMS TO THE PETITIONER.**

EXHIBIT P3: **TRUE COPY OF THE REPLY LETTER DATED 8.1.2013 SENT BY RASHEED ALI TO THE ASSISTANT COMMISSIONER (CUSTOMS DIVISION).**

EXHIBIT P4: **TRUE COPY OF THE LETTER DATED 17.1.2013 ISSUED BY THE OFFICE OF THE COMMISSIONER OF CENTRAL EXICISE AND CUSTOMS TO THE PETITIONER.**

EXHIBIT P5: **TRUE COPY OF THE STATEMENT GIVEN BY MR. RASHEED ALI, PROPRIETR OF THE PETITIONER AGENCY U/S 108 OF THE CUSTOMS ACT.**

EXHIBIT P6: **TRUE COPY OF THE SHOW CAUSE NOTICE DATED 27.3.2013 ISSUED BY THE RESPONDENT TO THE PETITIONER.**

EXHIBIT P7: **TRUE COPY OF THE REPLY DATED 1.3.2014 FURNISHED BY THE PETITIONER.**

EXHIBIT P8: **TRUE COPY OF THE ORDER DATED 10.7.2014 PASSED BY THE RESPONDENT.**

EXHIBIT P9: **TRUE COPY OF THE MEMORANDUM OF APPEAL FILED BY THE PETITIONER CHALLENGING EXT.P8 ORDER BEFORE THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, BANGALORE.**

EXHIBIT P10: **TRUE COPY OF THE ORDER OF THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, BANGALORE**

RESPONDENT(S)' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.K.JAYASANKARAN NAMBIAR, J.

....

W.P.(C).No.5061 of 2015

....

Dated this the 18th day of February, 2015

<u>J U D G M E N T</u>

The petitioner who is aggrieved by Ext.P8 order passed by the respondent, has filed Ext.P9 appeal and stay petition before the Customs Excise and Service Tax Appellate Tribunal, Bangalore. By Ext.P10 defect memo, the petitioner was informed that he would have to pay 7.5% of the duty confirmed against him by Ext.P8 order, as a condition for maintaining Ext.P9 appeal before the said Tribunal. He has been granted time till 19.02.2015 for complying with the said provision. In the writ petition, the petitioner is aggrieved by Ext.P10 notice to the extent it directs him to comply with the condition of depositing 7.5% of the duty confirmed against him by Ext.P8 order, as a condition for maintaining the appeal. It is the contention of the petitioner that the said condition is an onerous one and effectively deprives him of the right of appeal granted by the statute.

2. I have heard Sri.C.P.Mohammed Nias, the learned counsel for the petitioner and Sri.Thomas Mathew Nellimoottil, the learned Standing counsel for the respondents.

3. On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I find that by Ext.P8 order an amount of Rs.3,09,88,316/- has been confirmed against the petitioner by way of customs duty and cess in respect of goods imported. Apart from the said amount there are also separate penalties of Rs.3,09,88,316/- and Rs.31 lakhs confirmed against the petitioner under various provisions of the Customs Act. The requirement of pre-deposit of 7.5% of the duty or penalty, in cases where both have been imposed, as a pre-condition for maintaining the appeal before the Appellate Tribunal, is one that was introduced under the Customs Act with effect from 06.08.2014. As per the said condition, if an assessee pre-deposits the said amount, then the appeal itself is taken up for hearing by the Appellate Tribunal and there is no requirement of filing a further application for waiver of pre-deposit and stay pending disposal of the appeal. This has been clarified by the CBEC Circular No.984/08/2014 CX dated 16.09.2014. On a consideration of the statutory provisions therefore, I am of the view that the right of appeal granted by the statute is a conditional one and the conditions are not so onerous as to deprive the petitioner of an effective right of appeal. This is more so, because what is required to be deposited by the petitioner, as a condition for maintaining

the appeal, is only a small percentage of the duty/penalty amount confirmed against him, and the said amount has to be refunded to the petitioner in the event of his succeeding in the appeal before the Appellate Tribunal. In that view of the matter, I am not inclined to interfere with the direction in Ext.P10 notice requiring the petitioner to pre-deposit 7.5% of the duty confirmed against him by Ext.P8 order, as a condition for maintaining the appeal before the Appellate Tribunal.

The learned counsel for the petitioner would submit that in Ext.P10 notice, he has been granted time till 19.02.2014 for effecting pre-deposit. Taking note of the plea of financial hardship urged on behalf of the petitioner, I grant the petitioner time up to 20th March, 2015, for effecting the pre-deposit directed in Ext.P10 notice. It is made clear that, if the petitioner complies with the requirements in Ext.P10 notice by 20.03.2015, the same shall be treated as compliance with Ext.P10 notice by the Registry of the Appellate Tribunal .

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns/