IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :: 29.4.2015

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.33319 of 2014

Terumo Penpol Ltd.,
rep. By Chairman and M.D. C.Padmakumar
1-2, Jawahar Nagar,
P.O. Box No.6105,
Trivandrum 695 003 ... Petitioner

versus

1.Commissioner of Customs (Appeals)
Office of the Commissioner of Customs (Appeals)
Custom House, No.60, Rajaji Salai,
Chennai 600 001.

2.The Deputy Commissioner of Customs,
Special Valuation Branch,
Custom House,
Chennai 600 001. ... Respondents

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorari to call for the records in C3/432/O/2010-SEA in Order-In-Appeal C.Cus No.1740/2014 dated 25.9.2014, issued by the first respondent and quash the same as arbitrary and illegal.

For petitioner Mr.Joseph Prabakar

For respondents Mr.N.Senthil Kumar

O R D E R

The issue involved in this Writ Petition lies on a very narrow campus. According to the petitioner, when the Commissioner of Customs (Appeal) agreed with the case of the petitioner and set aside the order in original, cannot direct the petitioner to pay EDD equivalent to 5% of the assessable value till the issue of the fresh order.

2. The learned counsel for the petitioner would submit that when the order in original was put to challenge before the Appellate Authority, at the instance of the Department, the Appellate Commissioner, while accepting the case of the Department, remanded

the matter. That being the case, while remanding, he has no authority to direct the petitioner to pay EDD equivalent to 5% of the Assessable value since the entire issue has to be revisited by the original authority afresh for a reason that when there is a direction to reconsider the issue by the original authority, giving direction to the petitioner to pay EDD equivalent to 5% of the assessable value will definitely bear some influence on the merits of the matter.

3. Opposing the above prayer, the learned counsel for the respondents reiterated the averments made in the counter affidavit and urged this Court to dismiss the Writ Petition on the ground that the petitioner is having effective alternative statutory remedy under Section 129(A) of the Customs Act before the Customs, Excise and Service Tax Appellate Tribunal, on payment of 10% of the duty demanded. This Court, by-passing the said effective alternative statutory remedy, should not intervene with the impugned order, he pleaded.

4. This Court although finds some merit in the argument advanced by the learned counsel for the respondents that there is an effective alternative remedy available, as provided under Section 129(A) of the Customs Act, the ultimate conclusion reached by the Appellate Authority directing the petitioner to pay EDD equivalent to 5% of the Assessable value till the issue of the fresh order, in my considered opinion, is not maintainable for the reason that when the matter is remanded back to the file of the Original authority, all the issues are to be adjudicated afresh, without being influenced by any of the observation. While so, viewing the impugned order, direction given to pay EDD equivalent to 5% of the Assessable value, against the petitioner, in my view will prejudice the mind of the original authority while deciding the issue. Therefore, this Court, deleting only that portion of the order directing the petitioner to pay EDD equivalent to 5% of the Assessable value, directs the adjudicating authority to determine the issue after giving reasonable opportunity to the petitioner.

5. With this observation, the Writ Petition is disposed of. No costs. Consequently, M.P.No.1/2014 is also closed.

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-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To
1.Commissioner of Customs (Appeals)
Office of the Commissioner of Customs (Appeals)
ustom House, No.60, Rajaji Salai, Chennai 600 001.

2.The Deputy Commissioner of Customs,
Special Valuation Branch,
Custom House,
Chennai 600 001.

+ 1 cc to Mr.Joseph Prabakar, Advocate SR 24102

+ 1 cc to Mr.N.Senthil Kumar ADvocate 23963

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