IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2015

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.19455 & 19456 of 2015

Shri Ravinderkumar Rishabchand ...Petitioner in W.P.No.19455 of 2015

Smt.Chandrakala Ravinderkumar ...Petitioner in W.P.No.19456 of 2015

-vs-

The Commissioner of Customs (Appeals-I)
60, Rajaji Salai
Custom House
Chennai 600 001 ...Respondent in both the writ petitions

Petitions under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records comprised in Order in Appeal C.Cus-I Nos.233 & 234 of 2015 dated 29.05.2015 and quash the same and consequently direct the respondent herein to hear the appeals of the petitioners on merit without insisting for pre-deposit as mandated under the amended provisions of Section 129E of the Customs Act.

For Petitioners : Mr.N.Viswanathan

For Respondent : Mr.Rajnish Pathiyil
Senior Central Government
Standing Counsel

ORDER

These two writ petitions have been filed challenging the common impugned order dated 29.5.2015 passed by the Commissioner of Customs (Appeals-I), Chennai, in and by which it has been made clear that the

Commissioner (Appeals) shall not entertain any appeal under sub-section (1) of Section 128, unless the appellant therein has deposited seven and a half percent of the duty demanded or penalty imposed or both, in pursuance of a decision or an order passed by an officer of customs lower in rank than the Commissioner of Customs. On that ground, for not depositing 7.5% of penalty, the appeals were dismissed for non-compliance of the mandatory provisions as laid down under Section 129E of the Customs Act.

2. Mr.Rajnish Pathiyil, learned Senior Central Government Standing Counsel for the respondent submitted that since the show cause notice in the present case was issued on 15.9.2014 subsequent to the amendment that took place on 6.8.2014, the petitioners are liable to comply with the mandatory condition of pre-depositing 7.5% of the penalty imposed for filing appeals.

3. I have considered elaborately this issue in my order dated 12.6.2015 passed in Writ Petition No.12546 of 2015 (Fifth Avenue Sourcing Private Limited v. Commissioner of Service Tax) making it clear that the right of appeal becomes vested in the assessee the moment he files his return, which commences the assessment proceedings. The relevant portion of my order is given as under:-

> ''13.....The case of the assessees was that their right of appeal was governed by provisions as on the dates they filed their monthly returns which were prior to June 10, 1999, when there was no mandatory condition for pre-deposit of disputed tax before the appeal was lodged. On the other hand the Revenue contended that although the right of appeal was substantive, it vested in an assessee on the date when the order of final assessment was made under Section 12(2) of the Act or the order of reassessment was made under Section 16 of the Act and in any case, on the date when a notice of final assessment was issued under Section 12(2) or a show cause notice for reassessment was made under Section 16 of the Act. In that background, this Court has held that for the purpose of accrual of the right of appeal, the crucial and the relevant date is the date of initiation of assessment proceedings and not the decision itself. The right of appeal becomes vested in the assessee the moment he files his return, wich commences the assessment proceedings.

> In the case of assessees, the returns were filed long before the provision of Section 31 of the Act was amended by Act 14 of 1999. Further, it is not disputed that the aforesaid amendments to the Act have not been given retrospective effect but are prospective. Therefore, the appeals are deserved to be entertained without insisting on pre-deposit of 25% of the disputed tax as per the amended provisions of the Act."

4. In the light of the above, the impugned order is set aside and the respondent is directed to consider the appeals filed by the petitioners on merit and proceed in accordance with law without insisting upon the pre-deposit of 7.5% of the penalty amount. The writ petitions are disposed of accordingly. Consequently, M.P.Nos.1 of 2015 are closed. No costs.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

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To

The Commissioner of Customs (Appeals-I)
60, Rajaji Salai
Custom House
Chennai 600 001

2 CCs to Mr.N.Viswanathan, Advocate SR.No. 38794 & 38795

1 CC to Mr.Rajnish Pathiyil, Advocate SR.No. 39408

W.P.Nos.19455 & 19456 of 2015

VGI (CO)
PSI (26.08.2015)