IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.06.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.217 of 2015

M/s Jupiter Impex
represented by its Manager
Mr.Sivasankaran.M
No.16, (110/4) Armenian Street
Mannady
Chennai 600 001 .. Petitioner

-vs-

1. The Assistant Commissioner of Customs (Drawback)
   Custom House
   No.60, Rajaji Salai
   Chennai 600 001

2. The Commissioner of Customs (Appeals)-I
   Custom House
   No.60, Rajaji Salai
   Chennai 600 001 .. Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order-in-appeal C.Cus.No.89/2014 dated 20.11.2014 passed by the second respondent and quash the same and further direct the second respondent to hear and dispose of the appeal bearing no.C48/1005/O/2014-AIR on merits within a reasonable time frame.

For Petitioner :: Mr.Hari Radhakrishnan

For Respondents :: Mr.K.Mohanamurali
S.C.C.G.

ORDER

This writ petition is directed against the impugned order passed in order in appeal bearing C.Cus.No.89/2014 dated 20.11.2014 passed by the Commissioner of Customs (Appeals)-I, on the ground that when the petitioner filed an appeal against the order-in-original No.485/2014 dated 6.8.2014 passed by the Assistant Commissioner of Customs (Drawback-AIR), Chennai without making the pre-deposit of

7.5% of the demand as per the amendment, which came into force on 6.8.2014, the appellate authority dismissed the appeal for non-payment of the pre-deposit. Now the petitioner, agreeing with the dismissal order for non-payment of the pre-deposit, has deposited the entire 7.5% of demand as per the amendment, which came into force on 6.8.2014. A copy of the TR-6 challan bearing No.001681 enclosed at page-11 of the typed set of papers also shows that the petitioner had deposited 7.5% of the amount demanded representing pre-deposit as per the order-in-original dated 6.8.2014. Therefore, the learned counsel for the petitioner sought for a direction to the second respondent to hear and dispose of the appeal bearing C.No.48/1005/O/2014-AIR on merits, within a reasonable time, by setting aside the impugned order.

2. Mr.K.Mohanamurali, learned standing counsel for the respondents, placing two objections before this Court, sought for dismissal of the writ petition. Firstly, he pleaded that when the petitioner had not made the pre-deposit while preferring appeal, as per the amendment dated 6.8.2014, he suffered an order at the hands of the appellate authority on 20.11.2014. As against that, the petitioner cannot bypass the remedy available before the revisional authority under Section 129DD of the Customs Act, 1962. Secondly, he further contended that the petitioner should be directed to approach only the revisional authority as against the impugned order.

3. This Court finds no impediment for the petitioner to come to this Court seeking a reasonable direction to take up his first appeal, for the simple reason that the petitioner has not suffered any order on merits at the hands of the appellate authority. In this context, the operative portion of the impugned order is extracted as follows:-

> ''I have considered the facts of the case. I find that pre-deposit of 7.5% of the duty demanded is a mandatory stipulation and this appellate authority has no powers to relax or go by a case law, which is not on this provision of law directly. Therefore, the appeal is dismissed for non-payment of pre-deposit.''

4. A mere perusal of the impugned order goes to show that the appellate authority has dismissed the appeal preferred by the petitioner against the order-in-original for non-payment of the 7.5% of the duty demanded as per the amendment dated 6.8.2014. Now that the petitioner has complied with the said mandatory condition of pre-deposit vide TR-6 challan bearing No.001681, this Court is inclined to accept the prayer. Accordingly, the writ petition is disposed of with a direction to the second respondent to consider the appeal bearing No.C48/1005/O/2014-AIR on merits and pass appropriate orders in accordance with law, as the petitioner has complied with the

mandatory condition of pre-deposit of 7.5% of the demand for hearing the appeal. Consequently, M.P.No.1 of 2015 is closed. No costs.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

ss

To

1. The Assistant Commissioner of Customs (Drawback)
   Custom House
   No.60, Rajaji Salai
   Chennai 600 001

2. The Commissioner of Customs (Appeals)-I
   Custom House
   No.60, Rajaji Salai
   Chennai 600 001

+1 cc to to Mr.Hari Radhakrishnan, Advocate, sr.27247

W.P.No.217 of 2015

lrs(co)
kra(24/08)