IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.No.8226 of 2007

Shri Balaji Apparels,
Rep. by its Partner,
Mr.M.A.Elangovan,
41-B, Medavakkam High Road,
Keelkattali,
Chennai 600 117 .. Petitioner

Vs.

1) The Customs, Excise and Service Tax,
Appellate Tribunal, South Zonal Bench,
Sasthri Bhavan Annexe Building,
26, Haddows Road,
Chennai 600 006

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

3) The Assistant Commissioner of Customs,
Group III and IV,
Office of the Commissioner of Customs(Appeals),
Custom House, No.60, Rajaji Salai,
Chennai 600 001. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records comprised in Stay Order No.1090/2006 dated 08.11.2006 and consequential final Order No.85/2007 dated 25.1.2007, on the file of the first respondent and quash the same and consequently, direct the first respondent to take up the appeal and dispose the same on merits without insistence on pre-deposit.

For Petitioner : Mr.N.Mariappan

For RR 2 & 3 : Mrs.Dr.S.Seethalakshmi,
Learned Standing Counsel

ORDER

There is no representation on the side of the writ petitioner. The writ petition is taken up for final hearing today. The writ petition is of the year 2007 and has been pending before this Court for about a period of 10 years and involves revenue to the Government, this writ petition is being disposed of, based on the available records and the submission of the learned counsel for the second and third respondent.

2. The petitioner in this writ petition has challenged the dismissal of the appeal filed before the 1st respondent under Section 129 of the Customs Act. The appeal was dismissed by the first respondent on 25.01.2007 for not complying with the conditional order dated 08.11.2006 in the waiver of pre-deposit application filed by the petitioner. By an order dated 08.11.2006, the petitioner was directed to deposit a sum of Rs.50 lakhs by the first respondent as a condition precedent for entertaining the appeal under Section 129 of the Customs Act. Aggrieved by the dismissal of the appeal filed under Section 129 of the Customs Act, the petitioner has filed this instant appeal.

3. Learned Standing Counsel appearing on behalf of the respondents 2 and 3 submits that, as against the dismissal order of the first respondent, a civil miscellaneous appeal is alone maintainable before this Court, under Section 130 of the Customs Act. According to her, the writ petition under Article 226 of the Constitution of India, is not maintainable.

4.Having seen the provision under Section 130 of the Customs Act, this Court also finds that an appeal alone is maintainable before this Court against the dismissal order passed by the first respondent under Section 129 of the Customs Act. Further, this Court is of the view that since the subject matter involves revenue to the Government, the writ petition cannot be kept pending for a long period. This Court, therefore, holds that the present writ petition is not maintainable, since an appeal under Section 130 of the Customs Act is alone maintainable.

Considering the same, the writ petition is dismissed. No costs.

08.12.2017

sts/pam

Speaking Order
Internet: Yes
Index : Yes

ABDUL QUDDHOSE, J.,

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To:

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