IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

Delivered on: 03-04-2017

Coram:

The Honourable Mr. Justice V.RAMASUBRAMANIAN
and
The Honourable Ms. Justice J.UMA DEVI

Writ Petition Nos.8559 and 8560 of 2017

W.P.Nos.8559 of 2017 & 8560 of 2017

Between:

M/s. Lewek Altair Shipping Private Limited,
Represented by its Authorized representative
Mr. V.S. Ramachandra, having its office at
D.No.3-16-193/1, Sri Vidya Colony, Suryaraopet,
Kakinada, E.G. District

... Petitioner

Vs.

The Commissioner, office of the Commissioner
Of Customs, Preventive Commissionerate,
Vijayawada, D.No.55-17-3: C-14: 2nd Road,
Industrial Estate, Autonagar, Vijayawada

.. Respondent

For Petitioner	:	Mr. Vedula Venkataramana, Senior counsel
For Respondents	:	Ms. Sundari R. Pisupati, Learned standing counsel

**HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
HON'BLE MS. JUSTICE J. UMA DEVI**

Writ Petition Nos.8559 and 8560 of 2017

ORDER: (V. Ramasubramanian, J)

The petitioners in both the writ petitions have come up with the present writ petitions challenging two different Orders-in-Original passed by the respondent herein on 31-12-2015, holding that the vessels imported by them under Bill of Entry Nos.186 and 187, dated 22-11-2013 were classifiable under Tariff Item No.89059090 and consequently denying the benefit of exemption under Notification No.12/2012-Cus, dated 17-03-2012.

2. Heard Mr. Vedula Venkataramana, learned senior counsel appearing for the petitioners in both the writ petitions and Ms. Sundari R. Pisupati, learned standing counsel for the respondent.

3. As against the impugned Orders-in-Original, the petitioners have an effective alternative remedy of appeal to Custom, Excise and Service Tax Appellate Tribunal (CESTAT). But unfortunately, the petitioners have filed appeals without complying with pre-deposit condition. Therefore, by orders dated 10-01-2017 and 11-01-2017 respectively, the CESTAT dismissed the appeals as not maintainable for failure to comply with mandatory pre-deposit envisaged under Section 129 E of the Customs Act.

4. When the writ petitions came up for orders as to admission, it was contended by the learned senior counsel for the petitioners that the petitioners are entitled to challenge the Orders-in-Original, in

view of the fact that the question of jurisdiction was involved. But we pointed out that the said question, in the peculiar facts and circumstances of the case, may have to be adjudicated by the CESTAT first, before a regular appeal is filed before this Court under Section 130 of the Act.

5. Thereafter the writ petitions were adjourned. Today, the learned counsel for the petitioners filed a memo, pointing out that the petitioners have made payments on 13-03-2017, 20-03-2017, 21-03-2017 and 24-03-2017 and also on 17-03-2017, 20-03-2017, 21-03-2017 and 24-03-2017 of various amounts totaling to Rs.4,02,82,058/- and Rs.4,20,76,529/- respectively. In other words, the pre-deposit condition has now been satisfied.

Therefore, the writ petitions are disposed of, setting aside the orders of the CESTAT dated 10-01-2017 and 11-01-2017 and remitting the matters back to CESTAT and the CESTAT shall take note of the payments made and if the papers in the appeals are in order and if the deposits tantamount to satisfactory compliance with the mandatory condition, shall entertain the appeals and dispose it of in accordance with law. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V. RAMASUBRAMANIAN, J

J. UMA DEVI, J

Date: 03-04-2017

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