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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) 10015/2017**

HIND GLOBAL ENTERPRISES ..... Petitioner

Through : Mr. Priyadarshi Manish, Ms. Anjali J. Manish, Ms.Nidhi Saini, Advocates.

versus

THE COMMISSIONER OF CUSTOMS & ANR...... Respondents

Through : Mr. Abhishek Ghai, Advocate for Ms.Sanjeev Narula, SSC for Customs.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MS. JUSTICE PRATHIBA M. SINGH

O R D E R

% **14.11.2017**

The impugned order passed under Section 110A of the Customs Act, 1962 it is now accepted, is appealable in terms of the larger Bench's decision of the Customs, Excise and Service Tax Appellate Tribunal ('CESTAT' in short) in ***Gaurav Pharma Limited v. Commissioner of C. EX. & Service Tax, Rohtak, Delhi 2015 (326) E.L.T. 561 (Tri.-LB).*** A similar view was expressed by Division Bench of this court in ***Candex Chemical Fibres Co. (P) Ltd. v. Commissioner of CUS, New Delhi 2014 (310) E.L.T. 500 (Del)*** which makes a specific reference to appealable orders as per Section 128(1) of the Customs Act, 1962.

2. Learned counsel for the petitioner, however, has drawn our attention to the judgment of this court in case of ***Spirotech Heat Exchangers Pvt.***

Limited v. Union of India 2016 (341) E.L.T. 110 (Del.) and ***G.B. International v. Union of India 2017 (347) E.L.T. 406 (Del.).***

3. Normally, writ petitions are not entertained, where there is an equally efficacious alternative remedy. This is clear from the ratio expressed in ***Candex Chemical Fibres (supra)***, wherein, the writ petition was not entertained asking the petitioner to invoke the statutory appellate remedy within four weeks and whereupon, the appeal would be decided expeditiously within six weeks.

4. In ***Spirotech (supra)***, reference was made to ***Candex Chemical Fibres (supra)*** and thereafter, it was noticed that in similar other cases, the High Court had permitted provisional clearance of goods on furnishing of a Bond in the sum of 20% of the differential duty. These orders were challenged before the Supreme Court, where provisional release order was granted upon furnishing of Bank Guarantee equal to 30% of the differential duty.

5. In ***Spirotech (supra)***, the Court observed that in spite of the said orders of the High court/Supreme Court, the authorities were imposing harsh conditions for grant of provisional release order. The case of ***Spirotech (supra)*** was that of an exporter who was asked to pay 100% of the differential duty and also was asked to furnish a Bank Guarantee equal to 25% of the differential duty. In addition, Bond of 100% value of the goods was required to be executed. In these circumstances and noticing earlier orders, discretion was exercised notwithstanding the alternative remedy.

6. In ***G.D. International (supra)***, the court accepted the prayer made in the writ petition, after referring to the amendments made to the Customs Act

with effect from 6th August, 2014 incorporating statutory requirement to make pre-deposit restricted to 7.5% of the adjudicated amount and thus, the imposition of 100% duty in the circumstances was considered to be onerous. Goods were directed to be released on payment of 20% of the differential duty.

7. We do not perceive the aforesaid decisions and the ratio laid down as mandating and requiring that in all cases where provisional assessment/release order is passed and the petitioner pleads and perceives that the conditions imposed are harsh and onerous, the writ petition would be entertained, notwithstanding the statutory appellate remedy. Nor is it a principle or ratio that only 20-30% of the differential duty is required to be deposited. The facts of each case have to be considered and examined on their own merits.

8. We would also clarify that there is a difference between condition of pre-deposit and challenge to an order of provisional assessment/release on account of the fact that harsh and onerous conditions which are not justifiable have been imposed.

9. If the present writ petition is entertained, we would necessarily have to issue notice and await the counter affidavit which would take time. In fact it would delay the matter. Moreover questions would also arise with regard to facts relating to the imported goods etc.

10. Keeping in view the aforesaid position, we would observe that the petitioner should invoke the appellate statutory remedy by way of appeal under Section 128 of the Act. The same would be efficacious and proper forum for redressal of the grievance. If any such an appeal is filed within a

period of two weeks from today, the same would not be dismissed on the ground of limitation. We would also observe that if an appeal is filed, it would be disposed of expeditiously and preferably within a period of five weeks from the filing of the same.

11. Counsel for the respondent has undertaken to inform the petitioner about the authority before whom the appeal would lie as counsel for the petitioner states that there is some confusion as to the authority which has passed the provisional release order under Section 110A of the Customs Act, 1962.

12. With the aforesaid observations, without expressing any opinion on the merits, the writ petition is disposed of. No costs.

SANJIV KHANNA, J.

PRATHIBA M. SINGH, J.

NOVEMBER 14, 2017

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