BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 31.10.2018
CORAM:
THE HONOURABLE MRS. JUSTICE J.NISHA BANU
W.P(MD)No.21968 of 2018

M/s.Fashion Art House,
Represented by its Proprietor Deepak Jindal,
Shop No.1-B, KH No.1678, 1679,
Ground Floor, Village Aya Nagar,
New Delhi-110 047. ... Petitioner

vs.

1) The Union of India,
Represented by its Secretary,
Department of Revenue (Ministry of Commerce),
North Block, Raisina Hill,
New Delhi-110 001.

2) The Commissioner of Customs (Appeals)
Office of the Commissioner of CGST & Central Excise Appeals,
Coimbatore at Trichirappalli,
No.1, Williams Road, Cantonment,
Trichirappalli-620 001.

3) The Assistant Commissioner of Customs,
Custom House, New Harbour Estate,
Tuticorin-628 004. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, by calling for the records of the 2nd respondent ending with order in Appeal No.192/2018-TTN(CUS) dated 06.09.2018 pending on the file of the 3rd respondent in C.No.VIII/06/33/3018-Import Assessment vide order in Original No.26/2018-AC dated 05.07.2018 and set aside the same.

For Petitioner: Mr.V.S.Venkatesh

For R1 : Mr.R.Arjuna Rajan,
Central Government Standing Counsel

For R2 & R3 : Mr.R.Aravindan

ORDER

This writ petition has been filed challenging the order in Appeal bearing No.192/2018-TTN(CUS) dated 06.09.2018, passed by the 2nd respondent who had rejected the claim preferred by the petitioner praying for setting aside the order in original bearing

No.26/2018-AC dated 05.07.2018 and to restore the declared Customs Classification passed by the 3rd respondent, on the ground that the petitioner has not paid the pre-deposit required under Section 129 (E) of the Customs Act, 1962 and rejected the appeal for non compliance of the provisions of 129(E) of the Customs Act, 1962 claiming that it is a live appeal pertaining to classification.

2.The 2nd respondent by the impugned order paragraph 5, before going into the merits of the case took up the issue of non payment of pre-deposit for arriving at a decision. The 2nd respondent by virtue of Section 129(E) of the Customs Act, 1962, failed to entertain the appeal without pre-deposit resorting to Sub-Section (1) of Section 128 which mandates deposit of 7½ of duty in case where duty or duty and penalty are in dispute.

3.Learned counsel for the respondents 2 and 3 would state that the imported goods fall under Heading 6212 and would accordingly attract duty of Rs.22 crores as has been held in the impugned orders and if the petitioner is given any concession of pre-deposit, there will be revenue loss to the Government and therefore, prays for dismissal of the writ petition.

4.Heard the learned counsel for the parties and perused the materials available on record.

5.Perusal of record shows that there is a dispute in classification of the goods. Perusal of the record also shows that the goods are also pending clearance with the Customs House, Tuticorin. Though the petitioner has given valid reasons for not effecting pre-deposit and also relied on the decision of the High Court in its order dated 27.04.2018 in the Writ Petition(Civil) No.138/2018 and CM No.593/2018 filed by M/s.Shubh Impex, wherein, it was directed that on the petitioner making a pre-deposit of Rs.5,00,000/- in addition to Rs.3,70,008/-, the appeal filed by the petitioner shall be entertained by the first appellate authority, the 3rd respondent has passed an order that there are no provisions under Section 129(E) of the Customs Act, 1962 for relaxing the conditions of pre-deposit by the appellate authority who has rejected the claim of the petitioner for non payment of pre-deposit taking into consideration that waiver of pre-deposit preferred by the petitioner has no merit and rejected the appeal preferred by the petitioner before the 2nd respondent for non compliance of the provisions of Section 129(E) of the Customs Act, 1962. Aggrieved by the above order, the petitioner has filed the present writ petition.

6.Learned counsel for the petitioner has relied on a judgment passed by the Delhi High Court in Shubh Impex vs. Union of India and others (W.P(Civil)No.138/2018 and CM No.593/2018, dated 27.04.2018). In the said case, the respondents therein have challenged and questioned the maintainability of the writ petition in view of alternative remedy. Considering the facts and circumstances, the Delhi High Court has relaxed the condition of pre-deposit. The Court has referred to a decision in *Pioneer Corporation vs. Union of India 2016 (340) ELT 63 (Del)*, wherein a Division Bench of this Court has held that the High Court while exercising writ jurisdiction under Article 226 of the Constitution can exercise discretion and reduce the pre-deposit in rare and deserving cases, notwithstanding the amendment made under Section 35F of the Customs Act. The statute has not withdrawn or taken away the said power vested in the writ court, which should be exercised in rare but compelling and deserving cases when the cause of justice requires such reduction.

7.Here is a case, where there is a dispute in respect of classification of the total value of the goods. The total value of the goods is stated to be only Rs.13 lakhs, whereas the claimed amount is Rs.24 crores and therefore, it is a fit case where the classification has to be decided by the appellate court. Therefore, in my considered view, ends of justice would be met if a direction is given to the petitioner to deposit a sum of Rs.15,00,000/- and thereafter the appellate authority shall entertain the appeal.

8.Accordingly, the order passed by the 2nd respondent in Appeal No.192/2018-TTN(CUS) dated 06.09.2018, is set aside. The petitioner is directed to deposit a sum of Rs.15,00,000/- towards pre-deposit before the 2nd respondent and thereafter the 2nd respondent shall entertain the appeal and decide the same on its own merits within a period of eight weeks from the date of receipt of a copy of this order.

With the above direction, this Writ Petition is allowed. No costs.

Sd/-
Assistant Registrar(P&A)

/True Copy/

Sub Assistant Registrar(CS-2)

To

1) The Secretary to Government,Union of India,
Department of Revenue
(Ministry of Commerce),
North Block, Raisina Hill,
New Delhi-110 001.

2) The Commissioner of Customs (Appeals)
Office of the Commissioner of CGST &
Central Excise Appeals,
Coimbatore at Trichirappalli,
No.1, Williams Road, Cantonment,
Trichirappalli-620 001.

3) The Assistant Commissioner of Customs,
Custom House, New Harbour Estate,
Tuticorin-628 004.

+1cc to Mr.V.S.Venkatesh,Advocate Sr.No.93583
+1cc to Mr.R.Arjuna Rajan,Advocate Sr.No.94315
+1cc to Mr.R.Aravindan,Advocate Sr.No.94312

BALA

VB/PM/SAR2/29.11.2018/4P/7C

W.P(MD)No.21968 of 2018
31.10.2018