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

\+ **WRIT PETITION (CIVIL) No. 138/2018 and CM No. 593/2018**

Date of decision: 27th April, 2018

SHUBH IMPEX ..... Petitioner
Through Mr. Priyadarshi Manish, Ms. Anjali J. Manish and Ms. Nidhi Saini, Advocates

versus

UNION OF INDIA & ORS. ..... Respondents

Through: Mr. Kirtiman Singh, CGSC for UOI.
Mr. Sanjeev Narula, Sr. Standing Counsel with Mr. Abhishek Ghai Advocate for Customs.

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

**SANJIV KHANNA, J. (ORAL):**

The petitioner M/s Shubh Impex, sole proprietorship of Manish Sobti, had imported 'hooks and eyes fastening strips', the total value of which as per Bill of Entry dated 29th September, 2017 was Rs.13,28,470.20.

2. The value of the consignment is not disputed by the respondents.

3. The petitioner states that the imported goods fall under Custom Tariff Heading (CTH) 83081010 and accordingly customs duty of

Rs.3,70,008/- would be payable.

4. The respondents however submit that the imported "hooks and eyes fastening strips" fall under Chapter Heading 6212 and would accordingly attract duty of Rs.16,82,38,370/-, as has been held in the impugned order dated 15th November, 2017 passed by the Assistant Commissioner Group-4, ICD-Import, TKD, New Delhi.

5. The petitioner has challenged the assessment order dated 15th November, 2017 and submits that the goods should be classified under CTH 83081010.

6. It is an accepted and admitted position that the impugned order dated 15th November, 2017 can be challenged in appeal, but the petitioner to avail of the appellate remedy, has to make a pre-deposit of Rs.1.27 crores being 7.5% of the duty imposed.

7. The petitioner, on directions of this Court, has filed an affidavit stating his annual turnover and financial position for the year ending March, 2017. The petitioner had turnover of Rs.1.15 crores and had earned net profit of Rs.21.08 lakhs. As per income tax return for the Assessment Year 2017-18, the petitioner had gross income of approximately Rs.17 lakhs.

8. We agree with the counsel for the petitioner that direction to deposit Rs.1.27 crores as a pre-condition for hearing of the appeal, in the facts of the present case and in view of the nature of the controversy involved, would deprive and deplete the petitioner of his cash-in-hand and would completely disable and paralyse business operations. Condition and requirement to make complete pre-deposit of Rs.1.27 crores would not be appropriate and correct given the

financial condition and background of the petitioner, who would suffer financial breakdown and irreparable harm. We also record that the plea raised by the petitioner *prima facie* has merit and requires consideration. This is not a case of clandestine or dubious import.

9. The respondents have challenged and questioned maintainability of the writ petition in view of the alternative remedy.

10. Given the aforesaid facts, while we are inclined to accept the preliminary objection of the respondents on the alternative remedy, we are also inclined to interfere and relax the condition of pre-deposit. We would direct that on the petitioner making a pre-deposit of Rs.5,00,000/- in addition to Rs.3,70,008/-, the appeal which would be filed by the petitioner would be entertained by the first appellate authority. The pre-deposit would abide by the result of the appeal. First Appeal, if preferred within 21 days, would not be rejected on the ground of limitation.

11. In ***Pioneer Corporation versus Union of India***, 2016 (340) ELT 63 (Del), 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 case, 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.

12. Counsel for the petitioner apprehends that the petitioner may have to file second appeal before the Customs, Excise and Service Tax

Appellate Tribunal. We would observe that the plea/contention, at this stage, is hypothetical. At this stage, we need not pass any order and leave it open to the petitioner to file an appropriate application or file a fresh writ petition, if required.

13. Petitioner submits that the first appellate authority should hear the appeal expeditiously. It would be open to the petitioner to make such request before the appellate authority, who would consider the request keeping in view the limited questions raised and the quantum of payment raised.

14. The writ petition is disposed of in the aforesaid terms, with no order as to costs.

Dasti under signature of the Court Master.

**SANJIV KHANNA, J.**

**PRATHIBA M. SINGH, J.**

**APRIL 27, 2018**
**b/VKR**