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

\+ W.P.(C) 6213/2018

SH.GIRISH KUMAR MISHRA ..... Petitioner
Through : Dr. Ashutosh and Ms. Fatima, Advocate.

versus

UNION OF INDIA THROUGH CHIEF COMMISSIONER OF CUSTOMS ..... Respondent
Through : Sh. Amit Bansal, Sr. Standing Counsel with Sh. Akhil Kulshrestha, Advocate.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER
% **31.05.2018**

The petitioner challenges the validity of Section 129E of the *Customs Act, 1962* [hereafter "the 1962 Act"], contending that the requirement of compulsory predeposit of the percentage of the amount effectively shuts out access to the appellate remedy. In this case, the penalty imposed was ₹4 crores upon rectification. The statute, i.e. Section 129E of 1962 Act requires deposit of 10% of such amounts.

As far as the issue of validity of the provision goes, the *para materia* provision of law, i.e. Section 35F of the Central Excise Act, 1944 was challenged and later upheld in *Pioneer Corporation v. Pioneer Corporation v. UOI* 2016 (340) ELT 63 (Del). In these circumstances, the challenge to the substantive provision of 129E of the 1962 Act has to fail.

The Court has considered the submissions of the parties and taking into account the overall circumstances of the case, especially that the main role was not ascribed to the petitioner, i.e. smuggling of Red Sanders Woods but rather that he was one of the facilitators and also that he is a low grade employee, the Court is of the opinion that this is an appropriate case for directing complete waiver of predeposit. Accordingly, it is directed that in the event the petitioner prefers an appeal to the Central Excise and Service Tax Appellate Tribunal (CESTAT) within four weeks from today, challenging the impugned order, it shall be entertained and heard on its merits without insisting upon the predeposit. The writ petition is disposed of in terms of the above directions. Order *dasti*.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

MAY 31, 2018/ajk