IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITION NO.2405 OF 2019

Murari S. Sawant .. Petitioner.
v/s.
Commissioner of Customs
(Export) and Another .. Respondents.

Mr. Suresh Balasubramanian, for the Petitioner.

CORAM: M.S.SANKLECHA, &
M.S.SONAK, JJ.

DATE : 20th JUNE, 2019.

P.C:-

This Petition under Article 226 of the Constitution of India, seek a direction from this Court to Respondent No.2 – Commissioner of Customs (Appeal) to entertain the Petitioner's appeal under Section 128 from the order of the Addl. Commissioner of Customs Act, 1962 (the Act), ignoring the provisions of Section 129E of the Act. In fact, the only relief the Petitioner seeks is as under:-

> *" to direct the Respondent No.2 to admit the appeal to be filed by this Petitioner without insisting for the pre-deposit stipulated in Section 129E of the Customs Act, 1962."*

2 The grievance of the Petitioner is that the order of the Additional Commissioner dated 6th September, 2018 contains error apparent on record, which has lead to imposition of a penalty much higher then what, according to the Petitioner, can be imposed in law. In spite of the above, the Petitioner states that he is unable to challenge the order dated 6th September, 2018 in appeal under Section 128 of the

before the Commissioner of Customs (Appeals) as Section 129E of the Act requires an Appellant to deposit 7.5% of the duty and penalty which has been confirmed by the order which is sought to be challenged before the Commissioner of Customs (Appeals.)

3 It is a settled position that a right of appeal is a statute given right and in the absence of statute providing for the same, there is no natural or fundamental right to file an appeal before the Appellate Authorities under the Act. This right of appeal can always be bestowed subject to such conditions, as are thought fit by the legislature. (Vijay Metha 1989 (39) ELT 178 (SC). The Act provides that any party aggrieved by an order of Officer of the Customs below the rank of Commissioner of Customs, is entitled to file appeal under Section 128 of the Act to the Commissioner of Customs (Appeals). However, this right of appeal is not unconditional. It is circumscribed by the requirement of the party, seeking to appeal making necessary pre-deposit of 7.5% of the duty and penalty which has been confirmed by the lower authority. This deposit has to be made under Section 129E of the Act. This provision was held to be reasonable by this Court in ***Security Guards Board v/s. Union of India 357 ELT 51***. This Petition does not advisedly challenge the constitutional validity of Section 129-E of the Act as the same has been rejected by this Court in ***Haresh N.Vora v/s. Union of India 353 ELT 154.*** Therefore, in the above view, it is not for us to direct the statutory authority, functioning under the Act to ignore the requirement of the Act for the purpose of entertaining the appeal. In this view of the matter, we decline to entertain the Petition.

4 However, we make it clear that dismissal of this Petition will

not preclude the Petitioner from adopting any other remedy available to it under the Act, if permissible, such as rectification application in terms of Section 154 of the Act. Any such application made under the Act will be dealt by the Authority in accordance with law. This would be an issue to be decided by the person/authority to whom an application, if any, is made by the Petitioner under the Act. However, as pointed out above, we decline to entertain this Petition.

5 Accordingly, **Petition** is **dismissed.**

(M.S.SONAK,J.) **(M.S.SANKLECHA,J.)**