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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.07.2019

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

WRIT PETITION NO.10165 OF 2018
AND
W.M.P.NOS.12110 TO 12112 OF 2018

M/s.Hi Bright Apparels (P) Ltd.,
Represented by its Managing Director,
Mr.S.Benjamin

... Petitioner

Vs

1. The Customs, Excise & Service
Tax Appellate Tribunal,
No.26, Haddows Road,
Shastri Bhavan, Annexe I Floor,
Chennai 600 006.

2. The Commissioner of Central Excise,
Chennai III Commissionerate,
No.26/1, Mahatma Gandhi Road,
Chennai 600 034.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent, comprised in the impugned order, dated 18.09.2017, passed in Diary No.42043/2016, quash the same as illegal, arbitrary, unconstitutional, violation of the principles of natural justice and consequently, direct the 1st respondent to hear the petitioner's appeal, dated 16.09.2016 on merits, without insisting upon the pre-deposit of duty and penalty contemplated under Section 129E of the Customs Act, 1962 or in the alternative, treat the auction proceeds of Rs.1,20,94,656/- realized by the 1st respondent herein, through auctioning the goods seized from the petitioner herein and the amount of Rs.6,25,000/- realized through invocation of the Bank Guarantee furnished by the petitioner, along with B-17 Bond under Section 59 of the Act, as sufficient pre-deposit and dispose of the same, within a time bound manner.



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For petitioner	...	Mr.K.M.D.Muhilan
For 1st Respondent	...	Tribunal
For 2nd Respondent	...	Mr.A.P.Srinivas

O R D E R

[Order of the Court was delivered by SUBRAMONIUM PRASAD, J]

The petitioner has challenged the order of the Customs, Excise & Service Tax Appellate Tribunal, Chennai, 1st respondent herein, dated 18.09.2017, passed in Diary No.42043/2016 and consequently, sought for a direction to the 1st respondent to hear its appeal, dated 16.09.2016 on merits, without insisting upon the pre-deposit of duty and penalty contemplated under Section 129E of the Customs Act, 1962 or in the alternative, treat the auction proceeds of Rs.1,20,94,656/- realized by the 1st respondent herein, through auctioning the goods seized from the petitioner herein and the amount of Rs.6,25,000/- realized through invocation of the Bank Guarantee furnished by them, along with B-17 Bond under Section 59 of the Act, as sufficient pre-deposit and dispose of the same, within a time bound manner.

2. The Petitioner-company was incorporated under the provisions of the Companies Act, 1956, and is engaged in the manufacture and export of ready-made garments viz, pyjama tops and shorts covered under Chapter 62 of the Central Excise Tariff Act, 1985. Further, the petitioner company is also approved as a 100% Export Oriented Unit (EOU) and issued with a Green Card No.1444/MEPZ dated 06.10.2005 by the Development Commissioner, MEPZ, Chennai with a validity up to 05.10.2010 in respect of LOP No. PER - A/2005/067/EOU - TN, dated 04.10.2005 for manufacturing ready-made garments. The petitioner company also possess an Importer-Exporter Code bearing IEC No.3204004376. Further, the petitioner company is also registered under Section 58(1) and Section 65 of the Customs Act, 1962 (hereinafter referred to as "the Act") for sourcing and in-bond manufacturer respectively and is issued with License No.10/2005 by the Assistant Commissioner, Tambaram Division, Chennai-III Commissionerate. Necessary sanction has also been provided to the petitioner company to have an additional Bonded Warehouse facility at No.8, NH-3, Nagavalliaman Koil Street, MM Nagar, Kanchipuram District, Tamilnadu, by the Development Commissioner, MEPZ, Chennai. Further, the petitioner company is registered with Central Excise bearing Registration No.AABCH3946AXM003 dated 27.10.2006.

3. According to the petitioner, on 05.02.2007 and 06.02.2007, respectively the officers of Central Excise, Chennai



III Commissionerate conducted an investigation at the premises of the petitioner company and during the course of investigation, recorded statements from various persons of the petitioner company, under pressure. Investigation culminated in the issuance of a Show Cause Notice No.26/2007, dated 03.09.2007 alleging that,

"(a) That the petitioner company had diverted certain dyed woven fabric in the local market, which were imported duty-free, thereby leading to shortage of fabrics.

(b) That M/s.Hi-Bright Exports Pvt. Ltd. (hereinafter referred to as 'HBE'), an independent Domestic Tariff Area (DTA) unit at Tirupur utilized the aforesaid dyed woven fabrics for manufacturing ready-made garments.

(c) That certain ready-made garments manufactured out of aforesaid dyed woven fabrics were diverted in the local market without payment of appropriate import duty leviable on such goods.

(d) In spite of the petitioner company having executed a B-17 Bond under Section 59 of the Act, goods were cleared for home consumption and not duly accounted for.

(e) That the petitioner company and violated the provisions of Section 68, 71 and 111(J) of the Act and contravened the provisions of Notification No.52/2003 dated - Cus dated 31.03.2003 and conditions of the Bond. Consequently, the petitioner was called upon to show cause as to why the following penalty should not be imposed.

(f) An amount of Rs.73,16,751/- to be paid towards customs duty on the seized goods under Section 28 read with Section 72 of the Act.

(g) An amount of Rs.1,38,42,452/-to be paid towards customs duty on the shortage of duty-free imported fabrics arising on account of diversion to the DTA under Section 28(2A) read with Section 72 of the Act.

(h) A penalty equal to the duty as determined under Sub-Section 2 of Section 28 be imposed under Section 114A of the Act.

(i) Confiscation of goods seized vide Mahazar dated 05.03.2007 under Section 111 of the Act.

(j) An interest at appropriate rates for delayed payment of duty under Section 28AB of the Act.

(k) Appropriation of the bank guarantee of Rs.6,25,000/- executed in terms of the B-17 Bond to the above demand.

(l) Confiscation of the Eicher van seized under Mahazar dated 05.03.2007 under Section 115 of the Act.



7. Aggrieved by the Order-In-Original No.12/2008 dated 31.12.2008, passed by the 2nd respondent in violation with principles of natural justice, the petitioner has preferred an appeal before the 1st respondent under Section 129A(1) of the Act in the year 2011. However, at the time of arguments, the 1st respondent took a view that the petitioner cannot raise any issue concerned, since the petitioner company had not filed any appeal against the Order-In-Original No.12/2008 and it was only the Managing Director of the petitioner-Company, who had filed an appeal in Appeal No.C/25/2011 in his personal capacity. In view thereof, the petitioner company immediately filed an Appeal in Diary No.42043/2016, challenging the Order-In-Original No.12/2008 dated 31.12.2008, along with a petition to condone the delay, which was condoned by the 1st respondent.

8. In any event, the said Appeal in Diary No.42043/2006 filed by the petitioner company was returned by the 1st respondent for non-compliance of the pre-deposit requirements under the amended Section 129E of the Act, which mandated deposit of 7.5% of the adjudicated dues with the Tribunal, as a pre-condition for entertaining the Appeal. Considering the financial inability of the petitioner company, an application was filed seeking waiver of the pre-deposit, by treating the amount realised by the 2nd respondent through auctioning of the goods confiscated from the petitioner as payment of pre-deposit for filing the said appeal.

9. The petitioner has contended that the Commissioner of Central Excise, Chennai III Commissionerate, Chennai, the 2nd respondent, without properly considering the peculiar facts and circumstances of the case, vide order dated 14.09.2017, rejected the appeal as not maintainable for non-compliance of the requirement of Section 129E of the Act. In the facts and circumstances, according to the petitioner, the prayer for interim relief is not granted as prayed for, the same would cause grave and irreparable prejudice and hardship to the petitioner.

10. Supporting the prayer sought for, the petitioner has raised various grounds.

11. According to the writ petitioner, the petitioner's right to file an appeal, accrued as early as in 31.12.2008 and Section 129E of the Customs Act, 1962, which was amended only from 06.08.2014 and therefore, the appeal should have been governed by the then existing Section and not by the Section as amended in 2014. The petitioner, therefore, would state that under the unamended Section 129E, the tribunal had the discretion to waive the entire pre deposit amount. It is therefore contended in the writ petition that 129E as amended in 2014, cannot be made



applicable to the facts of the present case.

12. The petitioner also states that in any event, the 1st respondent had accepted the plea of the Managing Director of the petitioner company that if the benefit of Customs notification No.14/2003, is extended to the petitioner, the liability of duty would be reduced by 40%, which inturn will bring down the penalty imposed on the Managing Director. It is stated that since the petitioner has already deposited Rs.6,25,000/-, the requirement to pay 7.5% on the alleged duty payable, would not have arisen.

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

14. The short issue, which arises for consideration is whether the petitioner would be entitled to the benefit of the pre-amended Section 129E of the Customs Act, 1962 since the right to file an appeal had accrued prior to the amendment to Section 129E of the Customs Act, 1962.

15. Section 129E of the Customs Act, 1962 as it stood prior to amendment and after the amendment reads as under.
Prior to amendment

129E Deposit, pending appeal, of duty and interest, demanded or penalty levied. —Where in any appeal under this Chapter, the decision or order appealed against relates to any duty and interest demanded in respect of goods which are not under the control of the customs authorities or any penalty levied under this Act, the person desirous of appealing against such decision or order shall, pending the appeal deposit with the proper officer duty and interest demanded or penalty levied:

Provided that where in any particular case, the Commissioner (Appeals) or the Appellate Tribunal is of the opinion that the deposit of duty and interest demanded or penalty levied would cause undue hardship to such person, the Commissioner (Appeals) or, as the case may be, the Appellate Tribunal may dispense with such deposit subject to such conditions as he or it may deem fit to impose so as to safeguard the interests of revenue:

Provided further that where an application is filed before the Commissioner (Appeals) for dispensing with the deposit of duty and interest demanded or



penalty levied under the first proviso, the Commissioner (Appeals) shall, where it is possible to do so, decide such application within thirty days from the date of its filing.

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After amendment:

129E. Deposit of certain percentage of duty demanded or penalty imposed before filing appeal:-

The Tribunal or the Commissioner (Appeals), as the case may be, shall not entertain any appeal,--

(i) under sub-section (1) of Section 128, unless the appellant has deposited seven and a half per cent of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of a decision or an order passed by an officer of customs lower in rank than the Principal Commissioner of Customs or Commissioner of Customs;

(ii) against the decision of order referred to in clause (a) of sub-section (1) of section 129A, unless the appellant has deposited seven and a half per cent. of the duty, in case where duty or duty and penalty are in dispute,

or penalty, where such penalty is in dispute, in pursuance of the decision or order appealed against;

(iii) against the decision or order referred to in clause (b) of sub-section (1) of section 129A, unless the appellant has deposited ten per cent. of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of the decision or order appealed against:

Provided that the amount required to be deposited under this section shall not exceed rupees ten crores:

Provided further that the provisions of this section shall not apply to the stay applications and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

16. On the comparison of the above, it could be seen that after the amendment, the appellant has to deposit 7.5% of the duty, in case where duty or duty and penalty are in dispute, or penalty, whether such penalty is in dispute, in pursuance to a decision or an order passed by an officer of customs.

17. There is no provision to waive, the pre-deposit of 7.5% on the alleged duty and penalty payable. The amended Section also makes it clear that this Section shall not apply to stay applications and appeals pending before the appellate authority prior to commencement of Finance (Nos.2) Act, 2014. Prior to



amendment, there was a discretion given to the tribunal, to dispense with the pre-deposit.

18. The learned counsel for the petitioner would contend that by virtue of Section 6 of the General Clause Act, 1987 the rights which were there to it cannot be taken away by the amendment. Section 6 of the General Clauses Act is also extracted.

6. Effect of repeal:- Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not--

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.

19. A right to appeal, is only a statutory right. The right to file an appeal can be hedged by conditions. If the argument of the petitioner is accepted then it would mean that there is a vested right in any appellant to claim the benefit of waiver of pre-deposit. Reading of Section 129E, as it stood prior to amendment shows that the appellant, before the tribunal, would apply to the tribunal for waiver of the entire pre-deposit and it was the discretion of the tribunal, whether to waive it or not. Further the proviso to section 129E after amendment does states that the pre-amended section will apply only to appeals. Pending on the commencement of Finance (No.2) Act 2014.



Therefore, an appeal filed after the amendment should be governed by the old Section

20. In any event, the entire Section 129E now stands substituted by the amended Act 25 of 2014. In such a case, the appeal would be governed only by the Section which stands on the date, when the appeal is sought to be filed. This issue, has been considered by another Division Bench of this Court in Dream Castle Vs. Union of India, reported in 2015(43) STR 25 (MAD), wherein this Court observed as under.

"57. That leaves us only with one more type of condition namely the condition to make a pre-deposit of a fixed percentage of the tax demanded or penalty levied or both. The answer to the question raised in this writ petition lies squarely in our answer to the question as to whether the condition of this nature requiring the assessee to make a pre-deposit of 7.5% could be placed in between the categories narrated in (i) and (ii) or in between categories narrated in (ii) and (iii) above. If this condition falls in between categories (i) and (ii), it is more onerous than the existing condition and hence, cannot take retrospective effect. If this condition falls in between categories (ii) and (iii), it is less onerous than the existing condition and hence, the question whether it is retrospective or not will not even be raised by those who are benefited by it. 58. The issue could also be looked at from another angle. Whenever an amendment (i) does not take away a right of appeal, or (ii) does not impose an additional condition for the exercise of the right of appeal, the parties can have no cause to complain. In Osram Surya (P) Ltd. v. Commissioner of Central Excise [2002 (142) ELT 5 (SC)], the Supreme Court was concerned with an amendment to the Central Excise Rules, 1944. Prior to 29.6.1995, Rule 57-G of the said Rules entitled a manufacturer to withdraw the Modvat credit at any time without there being any limitation. But, by an amendment which came into effect on 29.6.1995, the second proviso to Rule 57-G was introduced. By the new proviso, a period of limitation of six months was introduced for a manufacturer to take credit. When it was argued that the amendment took away a vested right, the Supreme Court distinguished its earlier decision in Eicher Motors Ltd. v. Union of India [1999 (106) ELT 3] and held that the mere imposition of a restriction with regard to the exercise of a right, without taking away such a right, would not tantamount to a retrospective amendment. The Court held that the



second proviso inserted by way of amendment did not take away the right, but merely restricted the period available for a manufacturer for the exercise of such a right.

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59. Therefore, if one condition that was already available in the statute for the exercise of a right of appeal, is merely replaced by another condition, the same cannot be said to be retrospective, unless it is definitely shown that the amended condition is more onerous than the unamended condition. When the unamended condition gave only a chance or hope for an assessee to get a total waiver at the discretion of the Appellate Authority, the same cannot be equated to a vested right. A mere chance of convincing the Appellate Authority to exercise the discretion for the grant of a total waiver is no vested right. The amendment, in our considered view, did not take away a right vested, but merely made a chance divested. What has now gone, is not the right, but the chance or hope. Therefore, the first contention of the learned Senior counsel for the petitioner is liable to be rejected.

60. The second contention of the learned Senior Counsel for the writ petitioner revolves around the legal effect of a proviso. We have already extracted the amended Section 35-F in a tabular column given in para 19 above.

61. There are two provisos to the amended Section 35-F. The first proviso states that the amount required to be deposited under the new Section, shall not exceed Rs.10 Crores. The second proviso states that the provisions of this Section shall not apply to the stay applications and appeals pending before any Appellate Authority prior to the commencement of Finance Act 2 of 2014.

62. Taking clue from the second proviso, the Allahabad High Court held in para 20 of its decision in Ganesh Yadav that the appeals filed on or after the commencement of the amended provision on 6.8.2014 shall be governed by the requirement stipulated therein. In other words, the second proviso excluded certain types of cases from the purview of the amendment and the Allahabad High Court came to the conclusion that cases which do not fall within such exclusions, should be taken to be covered by the amended provision.



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63. Therefore, it is sought to be contended by Mr.C.Natarajan, learned Senior Counsel appearing for the writ petitioner that a proviso carving out an exception, need not necessarily be an indicator that what is not covered by the exception, will fall within the general Rule. In support of such a contention and in order to drive home the manner in which a proviso is to be interpreted, the learned Senior Counsel relied upon certain decisions which we shall now consider.

64. In Madras and Southern Mahratta Railway Company Limited vs. Bezwada Municipality [AIR 1944 Privy Council, 74], the Judicial Committee of the Privy Council opined that the proper function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment and its effect confined to that case. Where the language of the main enactment is clear and unambiguous, a proviso can have no repercussion on the interpretation of the main enactment, so as to exclude from it by implication, what clearly falls within its express terms.

65. In Commissioner of Income Tax vs. Krishna Warriar [AIR 1965 SC 59], the Supreme Court held that it is not always an inflexible rule of construction that a proviso in a statute should always be read as a limitation upon the effect of the main enactment. Though generally the presumption would be that but for the proviso the enacting part of the Section would have included the subject matter of the proviso, in some cases the clear language of the substantive provision as well as the proviso may indicate that both of them were substantive provisions.

66. In S.Sundaram Pillai vs. R.Pattabiraman [AIR 1985 SC 582], the Supreme Court reiterated that though normally a proviso is an exception to the main part of the Section, it could, in exceptional cases, be a substantive provision by itself. Quoting from its earlier decision in Dwarka Prasad vs. Dwarka Das Saraf 1976 (1) SCR 277, the Court pointed out that a proviso should be limited in its operation to the subject matter of the enacting clause and that to expand the enacting clause, inflated by the proviso, sins against the fundamental rule of construction. In para 43 the Court summarized the four different purposes that may be served by a proviso, as follows:-

"43. We need not multiply authorities



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after authorities on this point because the legal position seems to be clearly and manifestly well established. To sum up, a proviso may serve four different purposes:

(1) qualifying or excepting certain provisions from the main enactment;

(2) it may entirely change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable;

(3) it may be so embedded in the Act itself as to become an integral part of the enactment and thus acquire the tenor and colour of the substantive enactment itself; and (4) it may be used merely to act as an optional addenda to the enactment with the sole object of explaining the real intendment of the statutory provision."

67. In *Ali MK vs. State of Kerala* [AIR 2003 SC 4006], the Supreme Court quoted with approval the opinion rendered by the Privy Council in *Jinnings vs. Kelly* 1940 AC 206, to the effect that a proviso cannot be used to import into the enacting part, something which is not there. But where the enacting part is susceptible to several possible meanings, it may be controlled by the proviso.

68. In the light of the principles of law laid down in the above decisions, it is contended by Mr.C.Natarajan, learned Senior Counsel that the second proviso cannot be taken to curtail the effect of the substantive provision and that the second proviso cannot also be taken to cover all cases that do not come within the purview of the substantive provision.

69. But unfortunately, all the above contentions of the learned Senior Counsel revolving around the effect of the second proviso, overlook one important aspect. The Allahabad High Court did not say in *Ganesh Yadav* that the second proviso is a complete code in so far as cases that would not fall within the purview of the substantive provision. While interpreting the substantive provision, the Allahabad High Court drew inspiration from the second proviso to come to the conclusion that the substantive provision was capable



of interpretation only one way. Otherwise, there could have been no necessity for the second proviso at all.

70. In any case, on the first contention of the writ petitioner, we have independently come to a conclusion that even the substantive provision of Section 35-F, after its amendment, is not capable of any other interpretation. Our conclusions on the first contention was not on the basis of the second proviso. Therefore, we need not even find out whether the second proviso is exhaustive about the exclusions, or whether the second proviso is a substantive provision in itself or the extent to which the second proviso would control the substantive provision. Hence, the second contention of the petitioner is also rejected.

71. The third contention of the learned Senior Counsel for the writ petitioner is that the High Courts of Andhra Pradesh and Telungana and Kerala have taken a view that the amendment is prospective in nature and that it would apply only to proceedings originally initiated on or after 6.8.2014.

72. The decision of the High Court of Andhra Pradesh relied upon by the learned Senior Counsel in K.Rama Mohanarao is only a prima facie view. We have already analysed this decision while dealing with the first contention. Similarly, the decision of the Kerala High Court in Muthoot Finance Limited has also been analysed in great detail by us. With great respect to these Courts, we have not agreed with the view taken by them, for the reasons that we have indicated in great detail while dealing with the first contention. Therefore, the third contention is also rejected.

73. The contention of Mr. Joseph Prabhakar, learned counsel for the assessee/respondent in the writ appeal, based upon Sub-Sections (3) and (3-A) of Section 85 of the Finance Act, 1994 and the interpretation given to the same by this Court in Winwind Power Energy Private Limited, does not appeal to us. The curtailment of a period of limitation, by way of amendment, takes away a vested right of appeal. An amendment that takes away the right of appeal stands on a different footing from an amendment that merely changes the condition precedent for the filing of the appeal.



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74. Mr. Joseph Prabhakar, learned counsel, also advanced arguments on the basis of two Circulars dated 16.9.2014 and 5.1.2015. In para 1.2 of the Circular dated 16.9.2014, it was stated that the amended provisions would apply to appeals filed after 6.8.2014 and that Section 35-F of the Central Excise Act and Section 129-E of the Customs Act, contain specific saving clauses providing that all pending appeals/ stay applications filed till the enactment of the Finance Bill shall be governed by the erstwhile provisions.

75. On the ground that the aforesaid para 1.2 of the Circular dated 16.9.2014 created some confusion, the second Circular dated 5.1.2015 was issued. Para 4 of the second Circular reads as follows:-

"4. Para 1.2 of the Circular ibid stated that amended provisions would apply to appeals filed after 6th of August, 2014. An Act of Parliament comes in to effect on the date it received the assent of the President of India. Hence, the amended provisions regarding filing of appeal along with stipulated percentage of pre-deposit shall apply to all appeals filed on or after 6th August, 2014. Para 1.2 of the earlier Circular stands suitably modified."

76. We do not know how the above passage goes to the rescue of the assessee. The argument of the assessee in the cases on hand is that the amendment would apply only to the proceedings that commence with the issue of show cause notices on or after 6.8.2014. In other words, the contention of the writ petitioner before us is that if a show cause notice had been issued on 5.8.2014, the amended provisions will not apply to an order in original passed in pursuance of the same, even if such an order is passed after 6.8.2014. The above Circular does not support this contention of the petitioner.

77. Lastly it is contended by Mr. Joseph Prabhakar that the assessee does not stand to gain by fighting on pre-deposit condition. If they lose the battle after exhausting all avenues, the assessee is obliged to pay the amount due, together with interest at a higher rate. Therefore, it is his contention that a provision that grants a temporary reprieve to the assessee need not necessarily be interpreted in such a harsh manner.



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78. But we do not agree. In fact the assesseees should be more happy that they are not thrown at the mercy of the Appellate Authorities for considering the question of waiver of pre-deposit condition. The law now fixes a standard rate, applicable to all persons uniformly, without subjecting the assesseees to the vagaries of weather prevailing in the offices of the Appellate Authorities/Tribunals.

79. We have actually come across several cases where the Tribunal has granted waiver of different percentages in cases of identical nature, without any rhyme or reason. In fact this Court is burdened with appeals both under Section 35-G of the Central Excise Act and Section 130 of the Customs Act, against the orders of the Tribunal granting or refusing to grant waiver. Therefore, the amendment to the provision has actually taken away the possibility of an arbitrary exercise of power and along with it, the threat of multiplicity of proceedings even at the stage of waiver applications.

80. Therefore, we are of the considered view that the writ petition W.P.No.13431 of 2015 seeking a declaration that the amended Section 35-F of the Central Excise Act 1944, is applicable only to show cause proceedings initiated on or after 6.8.2014 is liable to be dismissed. Accordingly it is dismissed. There will be no order as to costs."

21. In view of the decision of this Court in Dream Castle Vs. Union of India, reported in 2015(43) STR 25(MAD), we do not find any merit in the writ petition. Section 6 of the General Clause Act, which deals with repeal cannot be applied to situations where the entire Section has been substituted. Instant writ petition is dismissed. No Costs. Consequently, the connected writ miscellaneous petitions are closed.

Sd/-

Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

ars/pkn



To

1. The Customs, Excise & Service
Tax Appellate Tribunal,
No.26, Haddows Road,
Shastri Bhavan, Annexe I Floor,
Chennai 600 006.

2. The Commissioner of Central Excise,
Chennai III Commissionerate,
No.26/1, Mahatma Gandhi Road,
Chennai 600 034.

+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.57483

+1cc to Mr.K.M.D.Muhilan, Advocate, S.R.No.57223

W.P.No.10165 of 2018
and WMP Nos.12110 to 12112 of 2018

VGI (CO)
CS/05/09/2019