IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 22.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.31286 of 2015
and
M.P.No.1 of 2015

A.Mujibur Rahman
Erstwhile Partner M/s. Universal Worldwide Express,
Courier & Cargo Services, 1A/1, First Floor,
Ram Mansion, 363, Pantheon Road,
Egmore ,Chennai - 600 008. ...Petitioner

Vs

1.The Commissioner of Customs (Appeals)
60, Rajaji Salai, Custom House,
Chennai - 600 008.

2.The Joint Commissioner of Customs,
(Courier Cell - ACC), New Customs House,
Meenambakkam, Chennai - 600 027.
...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, to direct the first respondent viz. The Commissioner of Customs (Appeals) Chennai to take on record the appeal dated 20.04.2015 filed by the petitioner herein which has been returned back to the petitioner herein and to dispose of the said appeal on merits without insisting for the pre-deposit of the unreasonable and arbitrary penalty imposed on the petitioner in the order impugned in the said appeal as per the mandate contained in the amended provisions of Sec.129E of the Customs Act brought into force with effect from 06.08.2014.

For Petitioner : Mr.N.Viswanathan

For Respondents: Mrs.Hema Muralikrishnan
Senior Standing Counsel

O R D E R

The limited prayer sought for in the writ petition is for an issuance of writ of mandamus directing the 1st respondent to consider the petitioner's appeal, without payment of mandatory deposit as contemplated under Section 129E of the Customs Act.

2.The legal basis on which the petitioner has sought for such a prayer is by relying on a decision of the Delhi High Court reported in 2016 (340) E.L.T. 63 (Del.) [Pioneer Corporation versus Union of India]. This decision cannot be relied upon for two reasons:

(i) The law that an appeal can be filed without making mandatory pre-deposit as contemplated under the provisions of the Act has not been laid down in the said case; and

(ii) The said decision only makes a reference that such a waiver of the pre-deposit should be made only in rare and deserving cases, where a clear justification is made out for such interference.

3.The petitioner would rely upon the averments in the Order-in-Original dated 17.02.2015, and would state that the grounds raised by the petitioner seeking interference by this Court falls under rarest of rare case. However, the fact of the case will have to adjudicated in an appeal. Neither the status of the petitioner nor the involvement of the facts can be considered in a writ petition and such grounds are pre-mature and cannot be considered to be a rarest of rare case, where this Court can interfere for the purpose of exempting the petitioner from payment of mandatory deposit.

4.The learned counsel also relied upon a decision of the Delhi High Court reported in 2019 (365) E.L.T. 165 (Del.) [Paresh K. Daftary versus Commissioner of Custom] and submitted that since the Delhi High Court had directed the Tribunal to entertain and adjudicate an appeal by reducing the mandatory deposit, this Court could also extend such relief. This decision would not be applicable to the case on hand, as in the decision cited supra, the Delhi High Court, was considering the issue of remanding the matter for the limited purpose of cross-examination of the witness concerned. In the facts and circumstances of that case, the Delhi High Court felt that deposit of 1% of the penalty would be reasonable and there again, the law was not laid to the effect that in all cases of pre-deposit, the Court should reduce the pre-deposit amount.

5.Yet another decision relied upon by the petitioner is that of the Delhi High Court reported in 2018 (14) G.S.T.L. 4 (Del.) Shubh Impex versus Union of India, wherein the Delhi High Court had permitted the petitioner therein to deposit a lesser amount as a pre condition for hearing an appeal. The analogy drawn from the earlier decision would also be applicable to the present case to the effect that no proposition of law has been laid down in the said decision to be binding on this Court. Further, the liberty extended to the petitioner in Shubh Impex case was purely on the facts of that case. The pre-deposit amount was found to be very high when compared to the annual net profit and turnover of the petitioner therein. By taking into the consideration the turn over and the net profit earned by the petitioner therein, the Delhi High Court felt it appropriate to reduce pre-deposit amount. The leniency extended therein is purely the discretion exercised by the Court and it cannot be said that law has been laid to that effect. As such, the decision relied upon by the learned counsel for the petitioner is not helpful.

6.The learned counsel for the respondent, on the other hand would rely upon the decision reported in 2016 (43) S.T.R. 25 (Mad.) Dream Castle versus Union of India, wherein, a Division Bench of this Court had upheld the condition of pre-deposit for filing an appeal under Section 35 F of the Central Excise Act. As such, when the statute itself provides for making a pre-deposit before filing an appeal, which provision has also been upheld by the Division Bench of this Court, I do not find any reason to consider the relief sought for by the petitioner for waiver of pre-deposit. Consequently, there are no merits in the present writ petition.

7.Hence, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

rst

To

1.The Commissioner of Customs (Appeals)
60, Rajaji Salai, Custom House,
Chennai - 600 008.

2.The Joint Commissioner of Customs,
(Courier Cell - ACC), New Customs House,
Meenambakkam, Chennai - 600 027.

+1cc to m/s.Hema Muralikrishnan , Advocate SR.No.68689

W.P.No.31286 of 2015
and
M.P.No.1 of 2015

A.SK(28/08/2019)