IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CUSAP-11-2017

Date of Decision: 20.3.2019

Kuldeep Thapar

....Appellant.

Versus

Commissioner of Customs, Tuglakabad, New Delhi

...Respondent.

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL.

PRESENT: Mr. Deepak Gupta, Advocate for the appellant.

Mr. Sourabh Goel, Advocate for the respondent.

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AJAY KUMAR MITTAL, J.

1. This appeal has been filed by the appellant under Section 130 of the Customs Act, 1962 (in short "the Act") against the order dated 14.12.2016 (Annexure A-8) passed by the Customs, Excise and Service Tax Appellate Tribunal, Principal Bench, New Delhi (hereinafter referred to as "the Tribunal") in C/Misc./51664/2016 in C/960/2005-CU(DB), claiming the following substantial questions of law:-

i) Whether impugned order is perverse and contrary to law?

ii) Whether Ld. Tribunal has passed the impugned order in violation of natural justice?

iii) Whether impugned order causes prejudice to the Appellant?

2. Put shortly, the facts necessary for adjudication of the instant appeal as narrated therein may be noticed. M/s Bhagwati International, Faridabad was engaged in the business of export of bearing and filed one shipping bill dated 23.1.1999 for export of consignment of bearing with the Customs at ICD, Tughlakabad, New Delhi. The Officers of Customs (Preventive) Department intercepted the said consignment on 28.1.1991 which was de-stuffed and examined by the Officers of the Customs. Thereafter, the goods were seized under Section 110 of the Act. On 29.1.1999, the residential premises of S/Shri K.K. Kaura and Mohan Lal Thapar, partners of M/s Bhagwati International were searched. The officers also searched shop No. 469/8, Dev Motor Market, Kashmiri Gate, New Delhi. During search, the officers seized bearing balls valuing ₹ 1,89,400/- under Section 110 of the Act. The factory premises of M/s Bhagwati International were also searched on 29.1.1999 and seized bearing found in the factory. The statements of Shri K.K. Kaura were also recorded on 30.1.1999 and 31.1.1999. The officers also searched godown of Shri Mohan Lal Thapar and the appellant on 2.2.1999 and recovered ball bearings of foreign origin valuing ₹ 3,82,000/- and ₹ 21,82,000/-, respectively and seized the recovered ball bearings. Accordingly, a notice dated 19.1.2000 was issued to the appellant to show cause as to why penalty under Sections 112 and 114 of the Act be not imposed upon him. The appellant filed replies dated 21.2.2000 and 15.3.2000 to the said show cause notice. The Adjudicating Authority vide order dated 29.8.2005 (Annexure A-1) imposed penalty of ₹ 5 lakhs upon the appellant and other noticees for

misusing the facility of 100% EOU. Feeling aggrieved by the order, Annexure A-1, the appellant filed an appeal along with stay application on 22.11.2005 (Annexure A-2) before the Tribunal. The Tribunal vide order dated 10.2.2006 (Annexure A-3) directed the appellant to deposit ₹ 1 lakh as pre-deposit for hearing of the appeal. M/s Bhagwati International along with its partners challenged the said order before this Court by filing writ petition and this Court dismissed the said writ petition. Thereafter, M/s Bhagwati International approached the Supreme Court who vide order dated 7.2.2008 remanded the matter to this Court for fresh consideration. This Court vide order dated 3.10.2008 remanded the matter to the Tribunal to pass fresh orders. The Tribunal vide order dated 16.11.2009 again directed M/s Bhagwati International and its partners to deposit the said amount as pre-deposit. The Tribunal vide order dated 16.3.2011 (Annexure A-4) dismissed the appeal for non-compliance of stay order. M/s Bhagwati International and its partners challenged the orders dated 16.11.2009 and 16.3.2011 before this Court by way of CWP-15876-2011. This Court vide order dated 3.4.2012 (Annexure A-5) allowed the said writ petition and directed the Tribunal to hear the appeal on merits without insisting for any pre-deposit. In pursuance thereto, the Tribunal restored the appeals. The Tribunal fixed number of hearings in the appeal filed by the appellant and sent various hearing notices (Annexure A-6 Colly). The Tribunal vide order dated 17.10.2016 declined to hear the appeal of the appellant as the same was dismissed vide order dated 16.3.2011 for non-compliance of stay order. The appellant moved an application dated 22.10.2016 (Annexure A-7) before the Tribunal for waiver of pre-deposit in pursuance of the order dated 3.4.2012 (Annexure A-5) passed by this Court and to restore the appeal.

The Tribunal vide order dated 14.12.2016 (Annexure A-8) dismissed the said application. Hence, the present appeal.

3. Learned counsel for the appellant submitted that the Tribunal was not justified in dismissing the application of the appellant for non-compliance of stay order especially when this Court vide order dated 3.4.2012 (Annexure A-5) had directed the Tribunal to hear the appeals without insisting for any pre-deposit.

4. After hearing learned counsel for the appellant, we do not find any merit in the appeal.

5. A show cause notice dated 19.1.2000 was issued to the appellant for imposing penalty under Sections 112 and 114 of the Act. The Adjudicating Authority vide order dated 29.8.2005 (Annexure A-1) imposed penalty of ₹ 5 lakhs upon the appellant and other noticees for misusing the facility of 100% EOU. The appellant filed an appeal along with stay application on 22.11.2005 (Annexure A-2) before the Tribunal. The Tribunal vide order dated 10.2.2006 (Annexure A-3) directed the appellant to deposit ₹ 1 lakh as pre-deposit for hearing of the appeal. The Tribunal vide order dated 16.3.2011 (Annexure A-4) dismissed the appeal for non-compliance of stay order. M/s Bhagwati International and its partners challenged the orders dated 16.11.2009 and 16.3.2011 before this Court by way of CWP-15876-2011. This Court vide order dated 3.4.2012 (Annexure A-5) allowed the said writ petition and directed the Tribunal to hear the appeal on merits without insisting for any pre-deposit. In pursuance thereto, the Tribunal restored the appeals. The Tribunal vide order dated 17.10.2016 declined to hear the appeal of the appellant as the same was dismissed vide order dated 16.3.2011 for non-compliance of stay order. The appellant

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6. The condition of pre-deposit of ₹ 1,00,000/- was imposed vide order dated 10.2.2006. Thereafter, the appeal filed by the appellant was dismissed on 16.3.2011 for non-compliance with the order of pre-deposit passed by the Tribunal. M/s Bhagwati International and others through CWP No. 15876 of 2011 assailed the order dated 16.11.2009 passed by the Tribunal in those cases seeking exemption from deposit of the duty imposed for maintaining the appeal. Vide order dated 03.04.2012, the writ petition was allowed and the order of pre-deposit was set aside. The Tribunal was directed to hear the appeal on merits without insisting of any pre-deposit as required in the ordinary cases where the goods were not in control of the department.

7. As noticed above, the appeal filed by the appellant was dismissed on 16.3.2011 for non-compliance of order of pre-deposit dated 10.2.2006 requiring the appellant to deposit ₹ 1 lakh as a condition precedent for hearing of the appeal. It was after five years from the dismissal of the appeal on 16.3.2011 and four years from the date of decision of the writ petition that the appellant had moved an application for restoration of appeal before the Tribunal which had been dismissed on 16.3.2011. The Tribunal dismissed the said application with the following observations:-

> "5. We find that vide stay order dated 10.02.2006, the

applicant was directed to make a pre-deposit of ₹ One Lakh towards penalty for consideration of their appeal for which the applicant failed to do so. Therefore, this Tribunal vide order dated 16.03.2011 dismissed their appeal. The plea of the applicant that in the case of co-appellants, the Punjab and Haryana High Court directed this Tribunal to hear the appeal on merit without insisting pre-deposit is not applicable to the facts of the case, as the applicant before us has never approached to the High Court of Punjab & Haryana against the stay order dated 10.02.2006. In that circumstances as the applicant has failed to comply with the conditions to stay order dated 10.02.2006, therefore, application for restoration of appeal deserves no merits. Accordingly, the same is dismissed."

8. No illegality or perversity could be pointed out by the learned counsel for the appellant in the aforesaid order passed by the Tribunal which may warrant interference by this Court. No question of law arises in this appeal. Accordingly, finding no merit in the instant appeal, the same is hereby dismissed.

9. A prayer was made by the learned counsel for the appellant to grant some time for pre-deposit. However, in the interest of justice, we grant one month's time to the appellant to make pre-deposit of the amount as directed by the Tribunal. It is directed that in case the appellant deposits ₹ 1 lakh within a period of one month from the date of receipt of the certified copy of the order, the appeal shall be heard by the Tribunal on merits in

accordance with law. Needless to say, anything observed hereinbefore shall not be taken to be an expression of opinion on the merits of the controversy.

(AJAY KUMAR MITTAL)
JUDGE

March 20, 2019
gbs

(MANJARI NEHRU KAUL)
JUDGE

Whether Speaking/Reasoned	**Yes/No**
Whether Reportable	**Yes/No**