

Pradnya Bhogale

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

WRIT PETITION NO. 763 OF 2020

Prabhulal Bhuralal Thakkar

..Petitioner

vs.

Union of India and Ors.

..Respondents

.....

Mr. Brijesh Pathak a/w Mr. Anand Sachwani for Petitioner.

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**CORAM : NITIN JAMDAR &
M.S.KARNIK, JJ.**

DATE : 29 JANUARY 2020

P.C.:-

By this Petition, the Petitioner has prayed for a direction to the Respondents to refund amount of Rs.10,00,000/- stated to have been deposited by the Petitioner. A show cause notice dated 31 July 2017 was issued to the Petitioner and several other persons in respect of demand of duty alleged to be evaded. The Petitioner responded to the show cause notice and the order was passed by the Commissioner of Customs (Import-II) on 31 May 2019. The Commissioner imposed the penalty on various parties stated to be involved in the evasion of duty. As regards the Petitioner a penalty of Rs.20,000/- was imposed for his act of

omission and commission under Section 112 (a) and/or 112 (b) of the Customs Act, 1962.

2. As against this order the Petitioner has filed an Appeal which is pending. The learned counsel for the Petitioner submitted that the Commissioner has erroneously forfeited the deposit made by the Petitioner of Rs.10,00,000/- observing that this deposit made by one Mr. Pravin Mody, alleged mastermind in the fraud. Learned counsel for the Petitioner submitted that the conclusion of the Commissioner is incorrect as the deposit was made by the Petitioner.

3. We have gone through the order passed by the Commissioner. The Commissioner has observed that the Petitioner along with other persons aided Mr. Pravin Mody in the evasion of duty and fully aware of the fraud. The Commissioner, after assessing the facts on record held that the deposit was not made by the Petitioner but by Mr. Pravin Mody. If it is the case of the Petitioner that the amount was not deposited by Mr. Pravin Mody, it would be a case of wrong forfeiture of the deposit. Nothing is shown as to why this ground cannot be agitated in the pending appeal filed by the Appellant. Since this remedy of Appeal is available and already availed of, it is not necessary for us to examine this issue in this Petition.

4. Keeping all contentions open, the Writ Petition is disposed of.

(M.S.KARNIK, J.)

(NITIN JAMDAR, J.)