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W.P.No.33296 of 2004

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2022

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THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.No.33296 of 2004 and
WPMP.No.40247 of 2004

M/s.Klen & Marshalls Manufacturers &
Export Ltd.,
Eskay Building,
144, Greams Road,
Chennai-600 006.

... Petitioner

Vs.

1.The Appellate Tribunal for Foreign Exchange,
4th Floor, B Wing,
Janpath Bhawan,
New Delhi – 110 001.

2.The Additional Commissioner of Customs,
Andheri (East),
Mumbai – 400 099.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, by quashing the said impugned order and consequently direct the First Respondent to dispose the appeal No.682/2004, filed by the Petitioner against Order-in-Original daqted 22.3.2004, without insisting upon the pre-deposit of 20% of the penalty amount.



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For Petitioner : Mr.Naveen
for Mr.T.Ramesh

For Respondents : Ms.K.Aishwarya (for R1)
for Mr.Rajnish Pathiyil,
Special Public Prosecutor

Mr.Gajendran Ravi
for Mr.B.Ramana Kumar (for R2)
Central Government Standing Counsel

ORDER

Heard Mr.Naveen, learned counsel for Mr.T.Ramesh, learned counsel for the petitioner, Ms.K.Aishwarya, learned counsel for Mr.Rajnish Pathiyil, learned Special Public Prosecutor for R1 and Mr.Gajendran Ravi, for Mr.B.Ramana Kumar, learned Central Government Standing Counsel for R2.

2. The petitioner was visited with show cause notices proposing the imposition of penalty under the Foreign Exchange Regulation Act, 1973 (FERA) and after being heard, suffered an order passed by R2, the Additional Commissioner of Customs on 22.03.2004, imposing penalty of a sum of Rs.1,40,00,000/- under Section 50 the Act. As against the same, the petitioner has preferred an appeal bearing Appeal No.682 of 2004, containing interalia, a request for waiver of deposit of penalty.

3. To be noted that Section 19 of the Foreign Exchange Management



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Act, 1999 provides for filing of an appeal before the Appellate Tribunal and the first proviso to Section 19(1) states that any person appealing against the order of the Adjudicating Authority or Special Director (Appeals) levying penalty, shall deposit the amount of penalty with the authority.

4. The second proviso states that where, in a particular case, the Appellate Tribunal is of the opinion that the deposit of penalty would cause undue hardship to such person, the Tribunal may dispense with the deposit subject to such conditions, as it may deem fit, so as to safeguard the realisation of penalty.

5. The impugned order states that the petitioner was called upon by issue of a notice to decide the request for waiver though in the affidavit filed in support of the writ petition, the petitioner states that he was not issued with any such notice.

6. However, and be that as it may, as the impugned order that disposes the request for waiver calls upon the petitioner to deposit 20% of the amount of penalty within 60 days from the date of receipt of that order, I am of the view that the request for waiver has been considered in a proper perspective and that the discretion exercised by the Authority cannot be faulted.



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7. Thus, the stay granted by this Court on 15.06.2005 stands vacated.

The petitioner is granted a further period of six weeks from date of receipt of a copy of this order to deposit the amount and upon proof of deposit being placed before R1, the appeal shall stand restored to the file of R1, notice issued, the petitioner heard and appeal disposed, in accordance with law.

8. This writ petition is dismissed in light of the discussion as above.

No costs. Connected miscellaneous petition is closed.

12.12.2022

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Index : Yes/No

Speaking Order/Non speaking Order

To

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DR.ANITA SUMANTH,J.

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