BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 10.02.2022
CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P(MD).No.13161 of 2018

S.Dharmaraj ... Petitioner

Vs.

1.The Commissioner,
Central Excise and Customs,
Madurai.

2.The Assistant Commissioner,
Central Excise,
Madurai II Division,
Madurai. ...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pursuant to the first respondent impugned order dated 14.12.2016 order in Appeal No.133 of 2016 quash the same and direct the first respondent to pass appropriate order on merits in the petitioner's pre-deposit waiver application on merits.

For Petitioner : Mr.J.John
For Respondents : Mr.K.Prabhu
Junior Standing Counsel

ORDER

The petitioner has challenged the impugned order dated 14.12.2016 passed by the 1st respondent in A.No.22 of 2016.

2. The petitioner herein had filed an appeal against the order in Original No.MAD-CEX-000-ASC-030-15 dated 19.11.2015. By an order in A.No.22 of 2016, the appellate Commissioner has dismissed the appeal filed by the petitioner on account of the failure of the petitioner to pre-deposit the mandatory amount equivalent to 7.5% of the duty demanded. The learned counsel for the petitioner has placed reliance on the decision of a Division Bench of this Court in the case of Tiruchitrambalam Projects Limited Vs Customs, Excise and Services Tax Appellate Tribunal and others reported in ***(2016) 4 LW 733*** at paragraph Nos.6, 8, 9 and 12.

3. Opposing the prayer, the learned counsel for the respondents submits that the writ petition has no merits inasmuch as the petitioner has failed to pre-deposit the statutory minimum prescribed under the Act. In this connection, a reference was made to the decision of this Court in the case of ***Ramki Vs. Additional Commissioner of Customs (PAU), Chennai*** reported in ***2017 (346) ELT 225 (Mad).*** It is further submitted that the petitioner has not made any mandatory pre-deposit under the amended Section 35F of the Central Excise Act, 1944. It is further submitted that the petitioner has only prayed for quashing of the impugned order passed by the 1st respondent and for a direction to the 1st respondent to pass appropriate orders on merits in the petitioner's application for waiver of pre-deposit. It is submitted that after the amendment of Central Excise Act, 1944 in 2014, there is no scope for filing any application for waiver of pre-deposit and that an appellant, who suffers an adverse order, has to pre-deposit 7.5% as a condition for entertaining the appeal before the first appellate authority.

4. I have heard the learned counsel for the petitioner and learned Junior Standing Counsel for the respondents. There is no merits in this writ petition.The mandatory requirement to pre-deposit was prescribed under Section 35F of the Act in the year 2014 amendment. The very purpose of bringing up the amendment was to ensure an early disposal of the appeal before the Appellate Commissioners and Tribunal under the Central Excise Act, 1944, Customs Act, 1962 and the Finance Act,1994, as the application before the Appellate Commissioners and Tribunal for waiver of pre-deposit was leading to pendency. In view of the amendment to Section 35 F of the Central Excise Act, 1944, the petition was required mandatory pre-deposit as a pre-condition for the appeal to be taken up for hearing.

5. The Writ Petition is therefore dismissed by directing the petitioner to pre deposit 7.5% of the amount within a period of thirty days from the date of receipt of a copy of this order. If such pre -deposit is made within such time, the Appellate Commissioner shall dispose the appeal on merits. No costs.

Sd/-

Assistant Registrar (Crl)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

To

1.The Commissioner,
Central Excise and Customs,
Madurai.

2.The Assistant Commissioner,
Central Excise,
Madurai II Division,
Madurai.

+1cc to Mr.J.JOHN, Advocate Sr.No.5877

W.P(MD).No.13161 of 2018
Date:10.02.2022

SA(05.03.2022) 3P 4C