IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2941 OF 2022

Jalak Exports .. Petitioner
v/s.
Commissioner of Customs (APSC) and Anr. .. Respondents

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Mr. Sanjay Singhal, for the Petitioner.

Mr. Satyaprakash Sharma, for the Respondents.

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**CORAM: G.S. KULKARNI &
JITENDRA JAIN, JJ.**

DATE : 11th SEPTEMBER 2023

P.C:-

This petition under Article 226 of the Constitution of India challenges an Order-in-Appeal dated 29th October 2021 passed by the Commissioner of Customs (Appeals), Mumbai, Zone-III.

2. There is also a prayer to hold that the KP Certificate accompanying the goods is a valid certificate covering the goods and hence there is no scope for ordering confiscation and imposition of various penalties on the Petitioner firm and its partners. The Petitioner has also prayed that the declared invoice value represents the

transaction value in terms of Section 14 of the Customs Act, 1962 and also in terms of the decision of the Supreme Court in **Commissioner of Customs, Mumbai vs. Mahalaxmi Gems**[1]. There is also a prayer for provisional release of goods on furnishing bond since 7.5% of the penalty amount has already been deposited while filing the appeal before the Commissioner of Customs (Appeals).

3. Learned Counsel for the Respondent Revenue has raised an objection to the maintainability of this petition on the ground that there is a remedy of an appeal as provided under the Customs Act, i.e. an appeal against the impugned order is maintainable before the Customs Excise & Service Tax Appellate Tribunal (CESTAT) under the provisions of Section 129A of the Customs Act, 1962.

4. Having heard learned Counsel for the parties and having perused the record, we are of the opinion that in the facts and circumstances of the present case, it would be appropriate that the Petitioner avails of alternative remedy of filing an appeal before the CESTAT. The Petitioners have fairly stated that they will file an appeal within a period of four weeks along with an interim application for interim prayer under Section 129A of the Customs Act, 1962. Let the appeal be filed within a period of four weeks from today before CESTAT and the CESTAT will adjudicate the same on merits without objection as to limitation since the Petitioner was bonafide pursuing the present

1 2008 (231) E.L.T. 198 (S.C.).

petition before this Court bonafide.

5. All contentions of the Petitioner are expressly kept open to be agitated in the appeal before the CESTAT.

6. We also note that as the issues are pending for some time, it would be appropriate that the Tribunal decides the appeal as expeditiously as possible and in any case within a period of six months from the date of filing.

7. Disposed of in the above terms. No order as to costs.

(JITENDRA JAIN, J.) **(G.S. KULKARNI, J.)**