IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

112 **Customs Appeal No.8 of 2023(O&M)**
Date of decision: 19.12.2023

BDS Trading Company **...Appellant**

Versus

Commissioner of Customs **...Respondent**

CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA
HON'BLE MS. JUSTICE LAPITA BANERJI

Present : Mr. Kapish Chawla, Advocate, for
Mr. Naveen Bindal, Advocate,
for the appellant.

Mr. Anshuman Choptra, Senior Standing Counsel, with
Mr. Deepesh Kakkar, Advocate,
for the respondent.

G.S. SANDHAWALIA, J. (Oral)

CM-13090-CII-2023

This is an application for condoning the delay of 171 days in filing the present appeal.

For the reasons mentioned in the application, which is supported by an affidavit, the same is allowed. Delay of 171 days in filing the present appeal is condoned.

Customs Appeal No.8 of 2023(O&M)

1. Challenge in the present customs appeal filed under Section 130 of the Customs Act, 1962 (for short 'the Act') is to the order dated 04.07.2022 passed by the Customs Excise & Service Tax Appellate Tribunal, Chandigarh. Vide the said order, the Tribunal dismissed the

appeal as none had appeared on behalf of the appellant and it was noticed that on an earlier occasion, on 28.02.2022, time of one month had been given to make the necessary pre-deposit. In the absence of the pre-deposit, the appeal was dismissed.

2. The sole contention is that as such stated in ground 13 (J) of the appeal that the appellant, which is a proprietorship, was suffering from acute financial crisis and has thus failed to make the necessary pre-deposit as required under Section 129-E of the Act. It is further averred that the appellant has arranged the funds and is now willing to make the mandatory pre-deposit and no prejudice would be caused, if the appeal is heard and decided on merits and thus, the remand is prayed for.

3. Reliance has also been placed upon similar relief having been granted by the High Court of Delhi in a ***Writ Petition (C) 12313 of 2021 Veronica Fashions Pvt Ltd. & ors. Vs. The Additional Secretary (Revisionary Authority) and Ors., decided on 29.10.2021***, wherein also the issue of pre-deposit of 7.5% of the duty of penalty in terms of Section 129E of the Act was the subject matter. The extension of time to make the pre-deposit and remanding the matter to the Commissioner (Appeals) had been rejected by the revisionary authority and the writ petition was, accordingly, allowed on the ground that the mandatory pre-deposit had been made. The Coordinate Bench on 16.05.2022 in ***VATAP-1-2020 'M/s Durga Industries Vs. The State of Punjab & ors.*** (Annexure P-4) also granted similar relief basically on the ground that the technicalities should not come in the way and the matter should be decided on merits.

4. Though the Tribunal had given adequate opportunity, however,

in view of financial difficulties the amount was not made good. Keeping in view the fact that the appellant is willing to deposit a sum of Rs.5,83,000/- to make good the pre-deposit, we allow the present appeal with the condition that in case, the deposit is made with the Tribunal within a period of two weeks from today, the appeal will be restored and heard on merits. Accordingly, we set aside the impugned order dated 04.07.2022 with the said condition.

5. Needless to say that if the deposit is not made within the said period, the impugned order shall spring back into operation and the present appeal will be deemed to be dismissed.

(G.S. Sandhawalia)
Judge

19.12.2023 **(Lapita Banerji)**
monika **Judge**

Whether reasoned/speaking: Yes
Whether reportable: No