



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13.08.2024

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CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR. JUSTICE G.ARUL MURUGAN

W.P.Nos.22687 and 22688 of 2003
& W.P.M.P.Nos.28053, 28054, 28056 and 28057 of 2003

M/s.Exim Aides
No.6, Exim House, 7th Cross,
Vasanth Nagar
Bangalore – 560 052
Rep. by its Proprietor
Sri.R.Sadagopan

... Petitioner in W.P.No.22687 of 2003

M/s.Exim Silks India (Pvt.) Ltd.,
No.6, Exim House, 7th Cross,
Vasanth Nagar
Bangalore – 560 052
Rep. by its Proprietor
Sri.R.Sadagopan

... Petitioner in W.P.No.22688 of 2003

Vs

1. Customs, Excise & Gold (Control) Appellate Tribunal,
Southern Regional Bench,
Shastri Bhavan, Haddows Road
Chennai – 600 006 rep. by Registrar.

2. The Commissioner of Customs (Sea Ports)
Custom House, 33, Rajaji Salai,
Chennai – 600 001

... Respondents in both W.P.'s



PRAYER in W.P.No.22687 of 2003: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent in C/Stay/152 in Appeal C/211/2002/MAS dt..2.8.02 and Stay Order No.476/2002 and its subsequent modified order dt.20.3.03 in Miscellaneous Order No.76/03 in C/MS/319/2002 in C/211/02 and Miscellaneous Order No.151/03 dt.21.5.03 in C/MS/147/03 in C/211/02 which culminated in dismissal of the appeal and quash the same and to direct the respondent to waive the pre-deposit and consequently direct the first respondent to hear the appeal on merits.

PRAYER in W.P.No.22688 of 2003: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent in C/Stay/153 in Appeal C/212/2002/MAS in Stay Order No.470/02 dated 2.8.02 and its subsequent modified order dt.20.3.03 in Miscellaneous Order No.77/03 in C/MS/320/2002 in C/212/02 and Miscellaneous Order No.152/03 dt.21.5.03 in C/MS/148/03 in C/212/02 which culminated in dismissal of the appeal and quash the same and direct the respondents to waive the pre-deposit and consequently direct the first respondent to hear the appeal on merits.

In both W.P.'s

For Petitioner : Mr.Vishun Mohan
for Mr.Rahul Balaji

For Respondents : Mr.H.Siddharth (for R2)
Junior Standing Counsel

R1 - Tribunal



COMMON ORDER

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(Order of the Court was made by Dr.ANITA SUMANTH,J.)

In these writ petitions, the petitioners challenge an order of the Customs, Excise and Gold (Control) Appellate Tribunal (CEGAT) dated 21.05.2003 rejecting an appeal filed by the petitioners for non-compliance with the conditions imposed under Section 129(e) of Customs Act, 1962 (in short 'Act').

2.The petitioners had suffered orders-in-original dated 13.02.2002 and had challenged the same before the CEGAT by way of two appeals. It had sought waiver of pre-deposit of the disputed demand of Rs.16,451,575/- and Rs.16,48,365/-, and by order dated 02.08.2002, the petitioners were directed to deposit an amount of Rs.15 lakhs in each order and report compliance.

3.Miscellaneous Applications were filed seeking reduction of the amount directed to be paid under order dated 02.02.2002. The request for modification was accepted by order dated 20.03.2023 reducing the amounts to Rs.5 lakhs per appeal. Since the reduced amounts were also not deposited, the appeals came to be rejected for non-compliance with the stay conditions, by order dated 23.05.2003. Hence these writ petitions challenging order dated 23.05.2003.

4.The first issue to be addressed is the maintainability of these writ petitions



challenging a final order of the CEGAT in the face of an alternate statutory remedy by way of Civil Miscellaneous Appeal under Section 35G of the Central Excise Act.

However, we take succour from a decision of this Court in the case of *Tiruchitrambalam Projects Ltd. V. CESTAT, Chennai* (2016 (43) STR 531) where a Division Bench of this Court has held the view that in appropriate cases where the writ petitions are heard by a Division Bench, it is permissible that a writ petition be maintained as against a final order of the CEGAT.

5.The present writ petitions are more along the lines of mercy petitions. No question of law arises for decision and the plea of the petitioners is that they were unable to comply with directions of the CEGAT in time, but may be permitted to comply with the same now. Mr.H.Siddharth, learned Standing Counsel appearing for R2 has no serious objection to the restoration of the appeals before the CEGAT conditional upon the petitioners making the pre-deposit now.

6.Fortified by the aforesaid decision, and with a view to balancing the interests of the parties, we accept the plea of the petitioners and set aside impugned orders dated 21.05.2003 upon condition that the petitioners remit a sum of Rs.15 lakhs per appeal within a period of four (4) weeks from date of receipt of a copy of this order.

7.Upon satisfaction of compliance with the condition as aforesaid, Appeal Nos.C/MISC/147 & 148/2003 in C/211/2002/MAS & C/212/MAS shall stand



restored to the file of the CEGAT and shall be heard and disposed as expeditiously as possible, seeing as the appeals are of the year 2003.

8.Since learned counsel for the petitioner states that in the interim, some remittances have been made towards the disputed amounts credit shall be granted to those amounts in computing the aforesaid amount of Rs.15 lakhs.

9.These writ petitions are allowed in terms of the instant order. No costs. Connected miscellaneous petitions are closed.

(A.S.M.,J) (G.A.M.,J)
13.08.2024

Index:Yes
Speaking order
Neutral Citation: Yes
vs

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Dr.ANITA SUMANTH,J
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