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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 03.05.2024

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W.P.(C) 4790/2024

M S BHARAT UDYOG THROUGH ITS PARTNER..... Petitioner

Versus

UNION OF INDIA & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner:

Mr. S. Sunil, Advocate.

For the Respondents:

Mr. Pradeep Kumar Jha, SPC with Mr. Karan Wadhwa, Advocate for UOI.

Mr. Anurag Ojha, Sr. Standing Counsel with Mr. Kumar Abhishek, Mr. Subham Kumar, Mr. Satyam Parashar, Mr. Sudhansu Goel and Mr. Rajeev Seth, Advocates.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 20.11.2023, whereby the request of the petitioner seeking refund of the pre-deposit of Rs.22,35,800 has been rejected as being premature.

2. As per the petitioner, said amount was deposited by the petitioner for the purposes of availing of the remedy of an appeal against an order-in-original dated 31.03.2012. Learned counsel submits that the petitioner intended to appeal against the said order and since there was already a Bank Guarantee with the department of



the said amount, he had requested the Custom Excise and Service Tax Appellate Tribunal to appropriate the amount of the Bank Guarantee towards the pre-deposit. He submits that by order dated 09.09.2013, the Tribunal accepted the request of the petitioner and permitted the department to encash the Bank Guarantee and appropriate the amount towards the pre-deposit amount. He submits that by final order dated 02.06.2016, the order-in-original dated 31.03.2012 was set aside and matter remitted for re-adjudication. He submits that that he is entitled to refund of the said amount, which was deposited towards the pre-deposit.

3. This is disputed by learned counsel for respondent who submits that the Bank Guarantee was furnished for securing provisional release of the consignment and not as a pre-deposit, however, keeping in view the fact that Bank Guarantee was already with the department, Tribunal permitted encashment of the same for appropriation towards the pre-deposit amount.

4. We find merit in the contention of learned counsel for respondent for the reason that the principle of restitution is that parties have to be placed in the same position as existing immediately preceding the day on which the subject order is passed.

5. Petitioner had secured release of the consignment by furnishing a Bank Guarantee much prior to the order-in-original being passed. After the order-in-original was passed, petitioner approached the



Tribunal by way of an appeal. The Tribunal noticing that a Bank Guarantee was already furnished, permitted encashment of the same for adjustment towards the pre-deposit amount. Once the order-in-original is set aside, petitioner has to be relegated to the position that was obtaining immediately prior to the passing of the order-in-original. The position existing immediately preceding the passing of the order-in-original, was that petitioner had furnished a Bank Guarantee in the sum of Rs.22,35,800/- for provisional release of consignment. In case petitioner seeks refund of the said amount, petitioner would be required to furnish a Bank Guarantee of the same amount to the department so that the department is also placed in the same position as obtaining on the day immediately preceding the passing of the order-in-original.

6. In view of the above, learned counsel for petitioner submits that he shall not press his application for refund of the amount and await the outcome of the adjudication, however, prays that a direction be issued to the department to expedite the adjudication proceedings.

7. In view of the above, petition is disposed of, directing the Adjudicating Authority to expeditiously dispose of the proceeding in accordance with law.

SANJEEV SACHDEVA, J

MAY 03, 2024/NA

RAVINDER DUDEJA, J