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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 15448/2024 & CM APPL. 64821/2024

M/S. WIDE IMPEX

.....Petitioner

Through: Ms Anjali Jha Manish, Ms Priyadarshi Manish, and Mr Aman Ahluwali, Advocates.

versus

THE PRINCIPAL COMMISSIONER OF CUSTOMS (IMPORT) & ORS.

.....Respondents

Through: Mr Harpreet Singh, SSC, Ms Suhani Mathur, and Mr Shivang Chawla, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

<u>O R D E R</u>

% **06.11.2024**

1. The petitioner has filed the present petition, *inter alia*, praying as under:-

> "(a) Issue a writ order or direction in the nature of certiorari to set-aside the Final Defect Miscellaneous Order No.25/2023 dated 14.02.2023, in Customs Defect Miscellaneous Application No.50231/2022 in Customs Defect Appeal Diary No.50014/2021, passed by the Learned Customs, Excise and Service Tax Appellate Tribunal, New Delhi; and
>
> (b) Issue a writ order or direction in the nature of mandamus to the respondent to consider the

> appropriated amount of bank guarantee i.e. Rs.15 Lacs and the value of goods which is imported against bill of entry No. 6646028 dated 02.06.2018 which is in custody of the department against the mandatory pre-deposit amount."

2. The petitioner is, essentially, aggrieved by the order dated 14.02.2023 whereby the petitioner's appeal preferred before the learned Customs, Excise and Service Tax Appellate Tribunal (hereafter *the CESTAT*) which was lying under defect, was rejected for want of the necessary pre-deposit.

3. The petitioner had preferred the said appeal against an order-in-original dated 31.01.2020, *inter alia,* in respect of the goods imported by the petitioner under the Bill of Entry No.4355561 dated 11.12.2017; the Bill of Entry No.6646028 dated 02.06.2018; and the past Bill of Entry from 13.08.2014 to 06.01.2018.

4. In terms of the said order-in-original, the transactional value of the goods imported against the aforesaid Bill of Entries was enhanced significantly. The aggregate value of the duty computed is ₹10,28,57,637/-. In addition, penalty was also imposed upon the petitioner. The petitioner was required to make a pre-deposit of 7.5% of the said value, which according to the petitioner works out to be ₹59,17,834/-.

5. Admittedly, the petitioner did not make the necessary pre-deposit. The petitioner wants to make good of the said payment by requesting that the bank guarantee of ₹15,00,000/- which was furnished at the time of the provisional release of the goods, be encashed. The petitioner also contended that since the goods have not been cleared and are lying with the Customs Authorities, the value of the goods be also reckoned towards the pre-deposit.

6. The said contention was not accepted by the Customs Authorities and,

in our view, rightly so. The bank guarantee, was furnished by the petitioner for a specific purpose of release of the goods and cannot be used at the instance of the petitioner, for a completely different purpose. However, even if it is accepted that the bank guarantee could be invoked for making the pre-deposit, admittedly the amount available would be insufficient to satisfy the requirement of the pre-deposit. Thus, undisputedly, the petitioner has defaulted in making the necessary deposit for maintaining the appeal. Thus, the decision not to entertain the petitioner's appeal cannot be faulted.

7. The petition is unmerited and, accordingly, dismissed. Pending application also stands disposed of.

VIBHU BAKHRU, J

SWARANA KANTA SHARMA, J

NOVEMBER 06, 2024

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Click here to check corrigendum, if any