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

\+ **W.P.(C) 15819/2024 & CM APPL. 66423/2024**

RAJESH GUPTA ALIAS MONU .....Petitioner

Through: Mr Bharat Singh, Advocate.

versus

UNION OF INDIA AND ORS .....Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

ORDER

% **14.11.2024**

1. The petitioner has filed the present petition, *inter alia,* seeking the following prayers:-

> "A. To issue a writ order in the nature of certiorari quashing and setting aside the impugned order of the Ld. Customs, Excise & Service Tax Appellate Tribunal, New Delhi dated 02.07.2024 (Annexure-P/1), impugned order of Ld. Customs, Excise & Service Tax Appellate Tribunal dated 10.10.2023 (Annexure-P/2), impugned order of Mr.Dinesh Kumar Gupta, Ld. Commissioner of Customs (Appeals) dated 21.03.2023 (Annexure-P/3), Impugned Order of Mr. Gauri Shankar Sinha Ld. Additional Commissioner of Customs dated 08.12.2021 (Annexure-P/4),
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> B. To issue a writ order or direction in the nature of mandamus commanding the respondents to restore the petitioner Application No-50264/2024 as the petitioner had deposited the penalty/pre-deposit fees of Rs.14,25,546.10 vide DD No.509751 dated 08.02.2024 of Rs.10,00,113.50 and DD No.509675 dated 09.02.2024 of Rs.4,25,432.60 which is more than 10% of the penalty amount of Rs.1,02,50,000/- as per section

> 129E of the Customs Act and same may be released to the petitioner; and/or
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> C. To pass an order by way of mandamus to the Custom Tribunal to hear this matter by condoning the delay, if any, on merit as the respondents have recovered the penalty amount/pre-deposit.
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> D. To pass an order to release the goods and other attached documents, property, and accounts of the petitioner.
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> E. To pass an order of certiorari to strike down the statutory provision of section 129E of the Customs Act, 1962, violating the fundamental rights of the petitioner guaranteed under article 13 of the Constitution of India, wherein the respondents have imposed the Customs Act upon GST paid Indian goods."

2. The petitioner is, essentially, aggrieved by an order dated 08.12.2021 (hereafter *the impugned order dated 08.12.2021*) passed by the learned Additional Commissioner of Customs whereby the penalty of ₹1,02,50,000/- has been imposed on the petitioner under various provisions of the Customs Act, 1962 (hereafter *the Act*).

3. The petitioner states that he was transporting poppy seeds and black pepper from Silchar to New Delhi in a parcel wagon of Poorvottar Sampark Kranti Express (Train No.15601) on 25.11.2019. The goods reached at New Delhi Railway Station on 27.11.2019, but were detained by the officials of the Directorate of Revenue Intelligence, Delhi Zone (DRI) for further investigation.

4. Thereafter, on 06.01.2020 the goods were seized under the seizure memo of the said date by the Intelligence Officer of Delhi Zone Unit (DZU). After the preliminary investigation, a show cause notice dated 19.05.2020

was issued and the said proceedings culminated in the impugned order dated 08.12.2021.

5. The petitioner filed an appeal against the impugned order dated 08.12.2021 before the Commissioner of Customs (Appeal) [hereafter *the CC(A)*]. However, the petitioner failed to make a pre-deposit for maintaining the said appeal. Accordingly, the learned CC(A) declined to entertain the petitioner's appeal on the ground of delay as well as non-compliance of provisions of mandatory pre-deposit Section 129(E) of the Act.

6. The petitioner assailed the order dated 21.03.2023 before the Hon'ble Allahabad High Court by filing a writ petition being [Civil Miscellaneous Writ Petition (Tax) No.452/2023]. The said petition was dismissed on 02.05.2023 with liberty to the petitioner to avail statutory appeal before the learned Customs, Excise and Service Tax Appellate Tribunal (hereafter *the CESTAT*).

7. The petitioner states that he filed the appeal against the impugned order dated 08.12.2021 and the order dated 20.03.2023 passed by the CC(A), before the CESTAT. However, the CESTAT dismissed the said appeal by an order dated 10.10.2023 (hereafter *the impugned order dated 10.10.2023*) holding that the appeals were not maintainable without the petitioner making the necessary pre-deposits.

8. The petitioner, once again, approached the Hon'ble Allahabad High Court by filing a writ petition being Writ Tax No.1356/2023 impugning the order dated 10.10.2023 passed by the CESTAT declining to entertain the petitioner's appeal. The Hon'ble Allahabad High Court once again dismissed the said petition by an order dated 01.12.2023 but left it open for the petitioner to avail other remedies in accordance with law.

9. The petitioner appealed the said order dated 01.12.2023 before the Division Bench of Hon'ble Allahabad High Court by filing a Special Appeal Defective No.43/2024. The said appeal was also dismissed by an order dated 31.01.2024 as the learned Division Bench did not find any grounds to interfere with the order dated 01.12.2023.

10. In the aforesaid context, the petitioner once again approached the CESTAT by filing an application (Application No.50264/2024) for restoration of his appeal. However, the same was dismissed by an order dated 02.07.2024, which is challenged in the present appeal.

11. It is apparent from the above, the petitioner has exhausted its remedies against it grievance of its appeals not being entertained on the ground of not making the pre-deposit. The petitioner has also agitated his grievance in this regard before the Hon'ble Allahabad High Court, *albeit* unsuccessfully.

12. In the given facts, it is apparent that the petitioner is seeking to reagitate the issues before this Court. This is clearly a case of forum shopping and cannot be countenanced.

13. The petitioner has also challenged the constitutional vires of Section 129(E) of the Act. We find no grounds to entertain the same in the given facts, as narrated above.

14. The petition is, accordingly, dismissed. Pending application also stands disposed of.

VIBHU BAKHRU, J

SWARANA KANTA SHARMA, J

NOVEMBER 14, 2024

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Click here to check corrigendum, if any