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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 7820 of 2025

M/s. Vishal Enterprises
Versus
Union of India & Ors.

Mr. Pradip Kumar Däs, Sr. Advocate
Ms. Ankita Mitra
Mr. Subrata Mukherjee
… For the petitioner.

Mr. Arabinda Sen
Mr. Kalidas Saha
… For Union of India

Mr. Kaushik Dey
Mr. Tapan Bhanja
… For the Customs authorities.

1. Challenging the deficiency memo dated 6th March, 2025, the instant writ petition has been filed.
2. It is the petitioner's case that although in course of investigation the petitioner had deposited a sum of Rs.30 lakhs and despite a portion of such amount being utilized by the petitioner for adjustment of the requirement of pre-deposit as required under Section 129E for maintaining an appeal under Section 128(1) of the Customs Act, 1962 (hereinafter referred to as the "said Act") and though in ordinary course upon the petitioner succeeding in the appeal such pre-deposit was required to be refunded to the petitioner upon the petitioner making an application, in the instant case, the aforesaid deficiency memo has been issued.
3. Mr. Das, learned senior advocate appearing in support

of the writ petition has placed before this Court a supplementary affidavit to bring on record the relevant form no. CA-3 filled up and filed by the petitioner before the appellate authority for maintaining the appeal under the said Act. Let such supplementary affidavit filed in Court today be taken on record.

4. By referring to serial no. 14 of the above form and Section 129E of the said Act, it has been submitted that the petitioner had requested the authorities to treat Rs. 20,00,466.56 out of the total deposit of Rs.30 lakhs already made during investigation to markup the amount of 7.5% of the duty demand of Rs.2,66,72,887/-, and based on the above premise the petitioner's appeal has been decided. Mr. Das would submit that unless Rs. 20,00,466.56 out of sum of Rs.30 lakhs was treated as pre-deposit by the appellate authority in respect of the appeal filed by the petitioner under Section 128 of the said Act, the appeal could not have been proceeded with in view of the specific embargo provided for in Section 129E of the said Act. It is submitted once, the petitioner has succeeded in appeal and on the petitioner making an application although, the respondents were obliged having regard to the Circular dated 16th September, 2014, issued by the Central Board of Excise & Customs, New Delhi, Ministry of Finance, Department of Revenue, Government of India, to refund the pre-deposit the

same has not been done. On the contrary, the above deficiency memo has been issued by treating the aforesaid application for refund of pre-deposit, as a refund within the meaning of Section 27 of the said Act. Having regard thereto, he submits that the respondents should not be permitted to deviate from the settled procedure as provided for in the Circular dated 16th September, 2014 and an appropriate order should be passed directing the respondents to refund said sum of Rs.30 lakhs deposited by the petitioner in course of investigation.

5. Mr. Dey, learned advocate appearing on behalf of the Customs authorities on the other hand while falling back on Form No. CA-3 as disclosed by the petitioner while filing the appeal would submit that although as per serial no.14, the petitioner was required to seek dispensation of the payment of pre-deposit having regard to the payment allegedly being made in course of investigation, the same has not been done. On the contrary, the petitioner has sought for adjustment of Rs.20,00,466.56 out of the deposit of Rs.30 lakhs towards 7.5% of the duty demand. The aforesaid would clearly demonstrate the intent of the petitioner to treat the aforesaid sum as a duty demand. In any event, according to him, even if the petitioner is entitled to refund of the pre-deposit, such application has to be made in the mode and manner prescribed in paragraph

7 of the Circular dated 16th September, 2014.

6. Mr. Sen, learned senior advocate appears on behalf of Union of India.

7. Heard the learned advocates appearing for the respective parties and considered the materials on record. *Prima facie*, it would transpire that the petitioner had preferred an appeal under the provisions of Section 128(1) of the said Act before the Customs, Excise and Service Tax Appellate Tribunal. Such Tribunal appeal has since been disposed of by the Tribunal by an order dated 17th December, 2024 in favour of the petitioner with a direction that the petitioner shall be entitled to consequential reliefs. On the strength of the aforesaid order, the petitioner had applied for refund of the pre-deposit whereupon the deficiency memo has been issued. I find that although, the petitioner could not demonstrate before this Court any order by which the aforesaid amount of Rs.20,00,466.56 was directed to be treated as pre-deposit, however, having regard to the provisions contained in Section 129E of the said Act, ordinarily, without the petitioner making a pre-deposit in the manner provided for in the said Act, or adjustment of any other deposit as pre-deposit, the appeal could not have been proceeded with. Having regard thereto, and in absence of any other explanation by the respondents it is only plausible to accept that Rs. 20,00,466.56/-

was adjusted out of the deposit of Rs.30 lakhs, towards pre-deposit. Since the matter pertains to refund of pre-deposit and the petitioner by relying on the Circular dated 16th September, 2014 would submit that the aforesaid pre-deposit is not a payment of duty and as such the refund application should not be subjected to the provisions of Section 27 of the said Act, for reasons noted above I am inclined to accept the same. However, taking note of the fact that a procedure for refund has been provided in paragraph 7 of the aforesaid Circular, I am of the view that the petitioner is required to adhere to the procedure provided for therein.

8. Thus, while quashing the deficiency memo dated 6th March, 2025, I permit the petitioner to apply before the appropriate authority by making a simple application in the manner prescribed in paragraph 7 of the Circular dated 16th September, 2014 for seeking refund of the pre-deposit to the extent of Rs.20,00,466.56.

9. If such application is made, the appropriate authority having regard to the observations made hereinabove and upon being satisfied that the aforesaid sum has been deposited by the petitioner during the course of investigation and otherwise not being utilized or adjusted against any other amount shall process the petitioner's refund application in accordance with law, preferably but not later than ten (10) weeks from the date of communication of this order.

10. With the above observations and directions the writ

petition is disposed of.

11. Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance of requisite formalities.

(Raja Basu Chowdhury, J.)