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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.10.2025

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THE HONOURABLE Mr.JUSTICE N. ANAND VENKATESH

W.P.No.37628 of 2025
AND
W.M.P.Nos.42107 & 42109 of 2025

M/s.R.R.Overseas
Rep. by its Managing Partner
Mr.B.Purushothaman
No.32, Kattur Sadayappan Street
Periamet, Chennai 600 003 .. Petitioner

Vs.

1.The Commissioner of Customs
Chennai VII Commissionerate
Air Cargo Complex, New Customs House
Meenambakkam, Chennai 600 027

2.The Assistant Commissioner of Customs
Drawback-AIR
Chennai VII (Air Cargo) Commissionerate
New Custom House
Chennai 600 016

3.The Commissioner of Customs (Appeals-I)
3rd Floor, New Custom House
GST Road, Meenambakkam
Chennai 600 016 .. Respondents

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Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus calling for records in and connected with Order-in-Appeal-C.Cus.I No./600/2025 dated 20.08.2025 passed by the 3rd respondent consequent to the Order-in-Original No.2308/2023-AIR dated 30.11.2023 passed by the 2nd respondent quash the same as illegal, arbitrary and in violation of principles of natural justice and further remand the matter back to the 2nd respondent for fresh consideration on merits and in accordance with law.

For Petitioner : Mr.B.Sathish Sundar

For Respondents : Mr.Siddharth Bhandari
Standing Counsel

ORDER

This writ petition has been filed against the proceedings of the 3rd respondent dated 20.08.2025, consequent to the original order passed by the 2nd respondent dated 30.11.2023 and for a direction to the 2nd respondent to deal with the appeal on merits.

2. The petitioner was engaged in export transactions during the period 2005 to 2013 and had availed duty drawback amounting to a sum of Rs.13,95,626/- on 55 shipping bills. This duty drawback was availed under the provisions of Section 75(1) of the Customs Act, 1962 and Rule 3 of the Customs Central Excise Duties and Service Tax Drawback Rules, 1995.

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3. The further case of the petitioner is that the customs authorities alleged that there was non-submission of proof of export realisation as is required under the relevant rules. Hence, a show cause notice was issued demanding the recovery of the entire drawback amount. Ultimately, the 2nd respondent, through proceedings dated 30.11.2023, passed an order by concluding that the export proceeds has not been realised and confirmed the demand made in the show cause notice for the drawback amount and interest.

4. Aggrieved by the above order, the petitioner filed an appeal before the 3rd respondent. The petitioner also sought for waiver of the mandatory pre-deposit exigency under Section 129E of the Customs Act, on the ground that the petitioner's bank account has been frozen by the department since 02.04.2025, resulting in exclusion from access for funds.

5. According to the petitioner, the frozen balance was Rs.6,73,811/-, which was substantially beyond the statutory 7.5% pre-deposit demand of Rs.1,04,672/-. The 3rd respondent passed the impugned order dated 20.08.2025, rejecting the waiver plea and dismissed the appeal on the ground that it is not maintainable due

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to non-payment of pre-deposit, by holding that the statutory bar on the discretionary waiver under Section 129E of the Customs Act, is inflexible and there can be no equitable exception for cases where bank account has been frozen. Aggrieved by the same, the present writ petition has been filed before this Court.

6. This Court heard the learned counsel for the petitioner and the learned Standing Counsel appearing for the respondents and carefully perused the materials available on record.

7. The Finance Act No.2 of 2014 introduced an uniform mandatory regime of pre-deposit at 7.5% / 10% of the duty or penalty for all appeals filed on or after 06.08.2014. In view of the same, the only issue that is involved is as to whether the petitioner will be entitled for the waiver or the reduction of pre-deposit, only on the ground that the bank account of the petitioner has been frozen.

8. The learned counsel for the petitioner placed reliance upon the judgment of the Punjab and Haryana High Court in ***Famina Knit Fabs Vs. Union of India*** reported in ***2020 (371) ELT 97 (P&H),*** to substantiate his submission that such discretion has to be exercised in this case, since the petitioner has been excluded/

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prevented from having access to the funds in the bank account.

9. In the considered view of this Court, the issue involved in the present case is squarely covered by the earlier judgment of this Court in ***Dream Castle Vs. Union of India*** reported in ***2016 (332) ELT 48 (Mad.)***. Similar view has been taken even by the Bombay High Court in ***Nimbus Communications Ltd. Vs. Union of India*** reported in ***2016 (43) STR 31 (Bom.)*** and also the CESTAT, Delhi. It has been categorically held that the right of appeal is only a statutory right and it is not an unfettered or absolute right and therefore, it is subject to conditions imposed by the legislature, where there is mandatory regime of pre-deposit. It was further held that this mandatory requirement cannot be relaxed only on the ground that the bank account has been frozen by the department. I am bound by the earlier decision taken by this Court and in my considered view, the mandatory pre-deposit cannot be waived only on the ground that the bank account of the petitioner has been frozen.

10. When this Court expressed its mind to the learned counsel for the petitioner, the learned counsel submitted that the petitioner may be permitted to make the pre-deposit and contest the appeal on merits.

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11. In the light of the above submission made by the learned counsel for the petitioner, it is left open to the petitioner to make the pre-deposit at 7.5% and the same shall be complied with on or before 22.10.2025. On such compliance, there shall be a direction to the 3rd respondent to revive the appeal and to hear the same on its own merits in accordance with law, after affording opportunity to the petitioner. If the petitioner fails to comply with the above condition, the order passed by the 3rd respondent dated 20.08.2025, will stand confirmed.

This writ petition is disposed of in the above terms. No costs. Connected W.M.Ps are closed.

08.10.2025

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Issue order copy by 10.10.2025

Index : Yes/No
Neutral Citation : Yes/No

To

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Air Cargo Complex, New Customs House

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