



\$~46

* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision: 25th March, 2025.*+ **W.P.(C) 3674/2025 & CM APPLs. 17175/2025 & 17176/2025****M/S WIDE IMPEX**

.....Petitioner

Through: Ms. Anjali Jha Manish, Ms.
Priyadarshi Manish & Mr. Aman
Ahluwalia, Advs.

versus

PRINCIPAL COMMISSIONER OF CUSTOMS IMPORT & ANR.

.....Respondents

Through: Mr. R. Ramachandran, Sr. Standing
Counsel with Mr. Prateek Dhir, Adv.**CORAM:****JUSTICE PRATHIBA M. SINGH****JUSTICE RAJNEESH KUMAR GUPTA****Prathiba M. Singh, J. (Oral)**

1. This hearing has been done through hybrid mode.
2. This is a petition filed by the Petitioner seeking issuance of an appropriate writ for setting aside the Order-in-Original No. 05-2020-MKSINGH-PR-COMMR-ICDIMPORT-TKD dated 31st January, 2020 passed by the Office of the Principal Commissioner of Customs (Import), ICD, Tughlakabad, New Delhi.
3. Additionally, the present petition also challenges the orders of the Customs Excise & Service Tax Appellate Tribunal (*hereinafter* 'Appellate Tribunal') which have repeatedly mandated that the pre-deposit amount should be paid by the Petitioner in order to seek appellate remedies against the Order-in-Original dated 31st January, 2020.



4. In effect, what Ms. Manish, Id. Counsel for Petitioner seeks through the present Petition is a waiver of pre-deposit amount on the ground that the total pre-deposit is to the tune of Rs. 59,17,834/- and out of that, Rs. 15,00,000/-, in terms of the bank guarantee has already been encashed by the Customs Department. It is further submitted that the goods of the Petitioner are also lying at the port. The said good were imported against bill of entry No.6646028 dated 2nd June,2018, and the value has been re-determined to the tune of Rs.49,24,056/- by the Customs Department. Hence, the same may also be considered while deciding upon the pre-deposit amount.

5. Ld. Counsel for Petitioner further submits that the Petitioner is undergoing enormous financial difficulties and is unable to submit the pre-deposit amount.

6. Ld. Counsel for the Petitioner has placed reliance on ***Shubh Impex Vs. Union of India 2018 (361) ELT 199*** wherein it has been held as under:

“12. Counsel for the petitioner apprehends that the petitioner may have to file second appeal before the Customs, Excise and Service Tax Appellate Tribunal. We would observe that the plea/contention, at this stage, is hypothetical. At this stage, we need not pass any order and leave it open to the petitioner to file an appropriate application or file a fresh writ petition, if required.

13. Petitioner submits that the first appellate authority should hear the appeal expeditiously. It would be open to the petitioner to make such request before the appellate authority, who would consider the request keeping in view the limited questions raised and the quantum of payment raised.

14. The writ petition is disposed of in the aforesaid terms, with no order as to costs.”



7. Further, reliance has also been placed on the decision in ***Government of Andhra Pradesh & Ors. v. P. Laxmi Devi (Smt.)***, (2008) 4 SCC 720 wherein the Supreme Court held as under:

“28. We may, however, consider a hypothetical case. Supposing the correct value of a property is Rs 10 lakhs and that is the value stated in the sale deed, but the registering officer erroneously determines it to be, say, Rs 2 crores. In that case while making a reference to the Collector under Section 47-A, the registering officer will demand duty on 50% of Rs 2 crores i.e. duty on Rs 1 crore instead of demanding duty on Rs 10 lakhs. A party may not be able to pay this exorbitant duty demanded under the proviso to Section 47-A by the registering officer in such a case. What can be done in this situation?

*29. In our opinion in this situation it is always open to a party to file a writ petition challenging the exorbitant demand made by the registering officer under the proviso to Section 47-A alleging that the determination made is arbitrary and/or based on extraneous considerations, and in that case it is always open to the High Court, if it is satisfied that the allegation is correct, to set aside such exorbitant demand under the proviso to Section 47-A of the Stamp Act by declaring the demand arbitrary. It is well settled that arbitrariness violates Article 14 of the Constitution vide *Maneka Gandhi v. Union of India* [(1978) 1 SCC 248 : AIR 1978 SC 597] . Hence, the party is not remediless in this situation.”*

8. On the other hand, Mr. R. Ramachandran, Id. Counsel for the Respondents submits that the Petitioner had repeatedly undertaken before the Appellate Tribunal that they would pay the pre-deposit amount and have not



paid the same. Thus, the Appellate Tribunal was left with no option but to dismiss the appeal on the ground of non-deposit of the pre-deposit amount.

9. The Court has considered the matter. A perusal of the record would show that after the Order-in-Original dated 31st January, 2020 was passed, the Petitioner had filed an appeal before the Appellate Tribunal and the same remained under defects for not furnishing the pre-deposit amount.

10. At that stage itself, the Petitioner had preferred a writ petition being **W.P.(C)15448/2024** titled **M/s Wide Impex v. The Principal Commissioner of Customs (Import) & Ors.** seeking that the appeal which has been rejected for want of pre-deposit be set aside and the matter may be heard on merits by Appellate Tribunal.

11. The prayer in the said writ petition was 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.”

12. In the said writ petition, vide order dated 6th November, 2024, a Coordinate Bench of this Court observed as under:-

“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 predeposit, 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'

13. Thereafter, the Appellate Tribunal has also passed several orders in the Appeal filed by the Petitioner, including an order dated 17th June, 2022 wherein the Petitioner itself has sought reasonable time to deposit the pre-deposit amount.

“ORDERSHEET

Learned counsel for the appellant states that the bank guarantee of Rs.15 lakhs, which has been appropriated against the liability, may be invoked by the Department and this amount may be considered towards part payment of the statutory pre deposit amount.

2. Regarding the balance amount towards the statutory requirement, learned counsel states that some reasonable time may be provided to the appellant.

3. The remaining amount may be deposited within two months from today. List on **August 23, 2022.**”

14. Again on 23rd August, 2022, the Tribunal directed as under:-

“ORDERSHEET

Learned counsel appearing for the appellant states that the appellant shall now write to the bank stating that the Department may invoke the bank guarantee so that the amount of Rs. 15 lakhs towards the pre-deposit can be adjusted.

2. For the balance amount, learned counsel for the appellant prays that one month further time may be granted.

3. **List on September 28, 2022** by which time the appellant shall take appropriate steps so that the bank guarantee can be invoked by the Department and the balance amount may also be deposited.”



15. Vide order dated 28th September, 2022, one month time was requested by the Petitioner which was subsequently granted by the Appellate Tribunal to deposit the balance amount.

16. On 4th November, 2022, another one month was granted to make the pre-deposit and finally on 14th February, 2023, the appeal was dismissed for not furnishing the mandatory pre-deposit amount.

17. Vide the present petition, the Petitioner is again effectively seeking to challenge the same dismissal of order dated 14th February, 2023 passed by the Appellate Tribunal despite such challenge being previously dismissed by the order of this Court in ***W.P.(C)15448/2024*** .

18. Though the prayers of the present petition are worded cleverly, the Petitioner seeks to challenge the order dated 14th February, 2023 vide which the Appellate Tribunal (CESTAT) has dismissed its appeal. The Petitioner is also seeking setting aside of the Order-in-Original dated 31st January, 2020 against which an appeal has already been dismissed.

19. Under these circumstances, in the opinion of the Court, the decisions in ***Shubh Impex (supra)*** and ***P. Laxmi Devi (supra)*** would be of no assistance as the Petitioner cannot have a second round of litigation on the same issue.

20. The petition is, accordingly, dismissed. Pending applications are also dismissed.

PRATHIBA M. SINGH
JUDGE

RAJNEESH KUMAR GUPTA
JUDGE

MARCH 25, 2025/kk/ss