CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

SOUTH ZONAL BENCH

CHENNAI

C/MISC/40242/2017 & C/40899/2017

(Arising out of Order-in-Original No.23/2016 dated 06.12.2016 passed by the Commissioner of Customs, Tuticorin)

Sri.D.Ramesh Kumar — Appellant

Vs

Commissioner of Customs, Tuticorin — Respondent

Appearance

Shri.N.Devarajan, Advocate For the Appellant
Shri.K.P.Muralidharan (AC) AR For the Respondent

CORAM :

Hon'ble Ms. Sulekha Beevi C.S. Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of hearing / decision : **4.08.2017**

FINAL. ORDER No. 41655/2017

Per Bench

The above Miscellaneous application is filed by the appellant seeking waiver of pre-deposit in filing the appeal.

2. On 31.7.2017 when the application came up for hearing, this Bench noticed that the appeal has been filed in the year 2017 i.e. after amendment

Customs, Excise & Service Tax Appellate Tribunal to Section 129 (E) of the Customs Act whereby mandatory pre-deposit has been introduced. After such amendment, the Tribunal ought not to entertain any appeal which is not accompanied by the mandatory pre-deposit prescribed in the said Section. Taking note of this fact, the Bench called for a report from the Registry as to how the appeal and Miscellaneous application has been numbered and listed for hearing. The registry has given their reply stating that initially this appeal was filed without mandatory pre-deposit and appellant was issued a defect memo. Thereafter the appellant filed a miscellaneous application seeking for waiver of pre-deposit. Since, the miscellaneous application cannot be numbered without numbering the appeal, the appeal as well as Miscellaneous application was numbered and listed for hearing. Thus Registry thinking that it is not a Stay application but Miscellaneous application has numbered the appeal and also the application and listed for hearing.

3. On behalf of the appellant, the Ld.Counsel Shri.N.Devarajan submitted that the appellant is not able to make pre-deposit and requested for waiver of the same. After the amendment to Section 129 E, the Tribunal has no powers to waive the pre-deposit and the same is invoked under sub-section 129 (E) as the mandatory pre-deposit. The Ld.AR Shri.K.P.Muralidharan has relied upon the judgement in the case of Dream Castle Vs Union of India 2016 (43) STR 25 (Madras) wherein the Honourable Jurisdictional High Court has held that after the amendment, the appellant has to comply with mandatory pre-deposit.

4. It is indeed correct that the Tribunal cannot entertain an appeal which is not accompanied by mandatory pre-deposit. The Registry ought to have given only Diary number to the appeal without giving appeal number.

Nonetheless giving number to the appeal or miscellaneous application by itself will not give the appellant a right to hear the appeal without making the mandatory pre-deposit. In such situation, the appeal which is not accompanied by mandatory deposit, having been wrongly numbered and entered in the file of the Tribunal, we are of the opinion that the appeal is to be dismissed for non-compliance of pre-deposit. Ordered accordingly.

5. Hereafter, the Registry is directed not to give appeal number to any appeal which is not accompanied by mandatory pre-deposit, even though any application or miscellaneous application is filed alongwith appeal. In such situation a Diary Number should be given and a defect memo should be issued to comply with mandatory deposit.

6. Appeal dismissed.

(Operative portion of the order was pronounced in open court)

Sulekha Beevi

(Madhu Mohan Damodhar)
Member (Technical)

(Sulekha Beevi C.S.)
Member (Judicial)

vsr

Customs, Excise & Service Tax Appellate Tribunal

प्रमाणित प्रति/Certified True Copy
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सहायक पंजीकार/Asst. Registrar
सीमाशुल्क उत्पादशुल्क एवं सेवा कर अपील अधिकरण/(CESTAT)
चेन्नै/Chennai