IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. III

Diary No. 50245 of 2017
C/51020/2017

M/s. Weldon Celloplast Ltd. **Appellants**

Vs.

Commissioner of Central Excise, **Respondent**
New Delhi

Appearance:

Shri Prabhjyot, Advocate for the Appellants
Shri Sanjay Jain, DR for the Respondent

CORAM:

Hon'ble Mr S K Mohanty, Member (Judicial)
Hon'ble Mr. V Padmanabhan, Member (Technical)

Date of Hearing : 19.05.2017
Date of Decision : 31.05.2017

FINAL ORDER No.54040/2017

Per V Padmanabhan:

The appeal filed has been placed before the Bench for resolving the following two defects:-

(1) The impugned order dated 18.5.2015 is claimed to have been received by the appellant on 5.11.2016. However, no evidence in support of undue delay in receipt of order has

been proved. No application for Condonation of delay also stand filed.

(2) On account of financial hardship the appellants have expressed their inability to make pre-deposit in terms of amended provisions of Customs Act, 1962. They have also paid the registration charge of Rs.5,000/- only whereas they were required to pay Rs.10,000/- since the disputed amount is more than Rs.50 lakh.

2. Heard both sides represented by Shri Prabhjyot, learned Counsel for the appellants as well as Shri Sanjay Jain, learned DR for the Revenue.

3. Learned Counsel submitted that they have strong case on merits. However the appellant on account of financial constraints could not make the pre-deposit as required under the amended provisions of section 129A (6).

4. Learned DR submitted on behalf of the Revenue that it is mandatory in terms of amended provisions of Customs Act to pre-deposit the dues confirmed against the appellant to the extent of 10% (second appeal). Since the appellant failed to make pre-deposit of same, the appeal will be liable to be dismissed without consideration.

5. The Customs Act has been amended with effect from 6.8.14 and section 129E has been substituted. The substituted section has been reproduced below for ready reference.

> *129E. The Tribunal or the Commissioner (Appeals), as the case may be, shall not entertain any appeal,—*
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> *(i)* *under sub-section (1) of section 128, unless the appellant has deposited seven and a half per cent. of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of a decision or an order passed by an officer of customs lower in rank than the Commissioner of Customs;*
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> *(ii)* *against the decision or order referred to in clause (a) of sub-section (1) of section 129A, unless the appellant has deposited seven and a half per cent. of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of the decision or order appealed against;*
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> (iii) *against the decision or order referred to in clause (b) of sub-section (1) of section 129A, unless the appellant has deposited ten per cent. Of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of the decision or order appealed against: Provided that the amount required to be deposited under this section shall not exceed rupees ten crores: Provided further that the provisions of this section shall not apply to the stay applications and appeals pending before any appellate authority prior to the commencement of the Finance (No. 2) Act, 2014."*

6. In terms of the amended section above, the appellant is required to pre-deposit the amount at the rate of 10% of the disputed amount, this being the appeal filed against the order passed by the first Appellate authority. We note from the record that the appellant has failed to pay this pre-deposit which has become mandatory with effect from 6.8.2014. Further, it is also noted that the appellants has not paid the registration fee as specified in section 129A (6). Consequently, the appeal cannot be admitted and is dismissed without going into the merits of the case.

(pronounced in the open court on 31.05.2017)

(S K Mohanty)
Member(Judicial)

(V. Padmanabhan)
Member(Technical)

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