IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
EAST REGIONAL BENCH : KOLKATA

Customs Appeal No.262 of 2010

(Arising out of Order-in-Appeal No.Kol./Cus/CKP/164/2010 dated 04.06.2010 passed by Commissioner (Appeals) of Customs, Customs House, Kolkata)

M/s P.V.Fashions Pvt. Ltd.
9, Kalyan Bhawan, 2, Elgin Road, Kolkata-700020

Appellant

VERSUS

Commissioner of Customs, Kolkata
15/1, Strand Road, Kolkata-700001

Respondent

Appearance:

None for the Appellant
Shri A.K.Singh, Authorized Representative for the Appellant

CORAM:

HON'BLE MR.JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE SHRI P. ANJANI KUMAR, TECHNICAL MEMBER

FINAL ORDER NO.75288/2020

DATE OF HEARING : 16.01.2020
DATE OF DECISION : 16.01.2020

Justice Dilip Gupta :

This appeal has been filed under Section 129A (1) of the Customs Act, 1962, to assail the order dated 4 June 2010 passed by the Commissioner of Customs (Appeals), by which the appeal filed by the appellant before the Commissioner (Appeals) was dismissed for the reason that the appellant had failed to ensure compliance of the order dated 21 May 2010 passed by the Commissioner (Appeals) requiring the appellant to deposit an amount of Rs.1,00,000/- (Rupees one lakh only) towards the pre-deposit on or before 3 June 2010.

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2. The relevant portion of the order passed by the Commissioner (Appeals) is reproduced below :

> "The application of the appellant was considered and the appellant was asked to make a pre-deposit of Rs. 1 lakh on or before 3rd June, 2010 in terms of I.S.O No.4/2010 dated 21.05.2010. The appellant was called for the hearing on 04.06.2010. Instead of depositing the amount and appearing for the hearing, the appellant has filed a letter through his advocate asking for 2 months' time so that they can approach the Tribunal or other authorities regarding the pre-deposit of Rs.1 lakh to be made under the above referred ISO. The ISO is only an interlocutory order. It provides that in case the appellant fails to make pre-deposit by the 3rd June, 2010, then the appeal is liable to be rejected. They were also called for the hearing but they did not turn up. Thus, since the appellant has not made the pre-deposit of Rs.1 lakh as required under the said ISO, I reject the appeal of the appellant in terms of Section 129E of the Customs Act, 1962."

3. This appeal was filed on 9 September 2010. Though in Column 9 of Form No.C.A.-3, the appellant stated that a separate application for waiver of duty and penalty has been made in the appeal, but a perusal of the appeal does not indicate that such an application has been filed. In fact, the appellant has filed an application dated 4 October 2010 with a prayer that the operation of the order dated 4 June 2010 passed by Commissioner of Customs (Appeals) be stayed. The said application was rejected by a detailed order dated 9 October 2018 as no one had appeared to press the application. The Bench observed that since no one had been appearing on earlier dates, the appellant was not serious about pursuing the stay application.

4. It is seen from the order sheet that the appeal, which was directed to be listed for hearing by the aforesaid date 9 October 2018, was listed on various dates, but no Counsel had appeared to press the appeal. Even today, no one has appeared to press the appeal.

5. We have perused the records and have also heard the learned Authorized Representative for the Department.

6. Section 129E of the Customs Act, 1962, as stood at the relevant time, provided *inter alia* that the person desirous of appealing against such decision or order shall, pending the appeal, deposit with the proper officer the duty and interest demanded or penalty levied. However, the deposit could be waived subject to such conditions as may be imposed.

7. The order dated 21 August 2010 passed by the Commissioner (Appeals) imposed a condition. The appellant was required to deposit Rs.1 lakh on or before 3 June 2010. The appellant, however, did not deposit the amount nor the appellant appeared before the Commissioner (Appeals). In such circumstances, the Commissioner (Appeals) dismissed the appeal.

8. There is, therefore, no error in the order passed by the Commissioner (Appeals).

9. Even in the present appeal, though the appellant had said that an application for waiver of pre-deposit would be filed separately, it is seen that such an application has not been filed.

10. Thus, for all the reasons stated above, the appeal is liable to be dismissed and is, accordingly dismissed.

(Dictated and pronounced in the open court)

Sd/

(Justice Dilip Gupta)
President

Sd/

(P. Anjani Kumar)
Member (Technical)

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