(2016) 02 GUJ CK 0030

In the Gujarat High Court

Case No : Tax Appeal No. 1163 of 2014

Rodex International APPELLANT

Vs

Commissioner of Customs RESPONDENT

Date of Decision : 04-02-2016

Acts Referred:

Citation : (2016) 336 ELT 618

Hon'ble Judges : Akil Kureshi and Mohinder Pal, JJ.

Bench : Division Bench

Advocate : Nirav P. Shah, Advocate, for the Appellant; R.J. Oza, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Akil Kureshi, J.(Oral)—Appellant is a partnership firm. Appellant had filed appeal before Customs, Excise and Service Tax Appellate Tribunal (CESTAT) against judgment of the Commissioner of Customs. In terms of Section 129E of the Customs Act, appellant had to either make pre-deposit of the duty or seek waiver thereof from the Tribunal. Appellant filed such application upon which the Tribunal by the impugned order required the appellant to deposit sum of Rs. 5 Lacs upon which the remaining recovery would stand stayed. When the appellant was unable to do so, the Tribunal by the impugned order dated 12-5-2014 refused to grant any further extension and consequently, dismissed the appeal for want of compliance of pre-deposit requirement.

2. Learned counsel for the appellant submitted that the imported goods in the nature of memory chips are already in the custody of the Customs Department. In that view of the matter, under Section 129E of the Customs Act, no further condition of pre-deposit can be imposed. Counsel relied on the decision of Supreme Court in the case of Bhavya Apparels Pvt. Ltd. v. Union of India reported in 2007 (216) E.L.T. 347 in this respect.

3. On the other hand, learned counsel, Shri Oza, submitted that the Tribunal

considering the facts of the case, the amount of duty, interest and penalty involved has imposed a condition which requires no interference.

4. In view of the fact that the goods worth for more than the said amount of Rs. 5 Lacs is in the custody of the Department, we are inclined to delete the condition of pre-deposit. We have also taken into account the appellant?s plea of financial hardship. Considering the facts and circumstances of the case, therefore, the condition of pre-deposit is deleted. The Tribunal shall hear the appeal of the appellant on merits. In Para-9 of the order dated 4-12-2013 of the Tribunal imposing pre-deposit requirement, we notice that the appellant had sought directions for clearance of the goods. Till the appeal is decided, the appellant shall not seek release of the goods.

5. With above clarifications and directions, tax appeal is disposed of.

