



MAJESTY LEGAL
Advocates & Solicitors

VALIDITY OF SECTION 129 OF CUSTOMS ACT, 1962 HELD INVALID BY SC

AJIT BAPU SATAM ETC. VERSUS UNION OF INDIA & ANR.

During the hearing of the case titled as "*Ajit Babu Satam Etc. Versus Union Of India & Anr.*"¹, Hon'ble Supreme Court allowed the petitioners to file an appeal before Ld. CESTAT under Section 129-E of the Customs Act, 1962 within one month. In the case, the petitioner challenged the constitutional validity of Section 129-E of the Customs Act, 1962 by invoking Article 226 of the Constitution of India as petitioners were aggrieved by the impugned provision mandating a pre-deposit of 7.5% of the penalty amount. The said section mandates that individuals seeking to file an appeal before the Commissioner (Appeals) or CESTAT against an order issued by the Adjudicating Authority must deposit 7.5% of Duty or Penalty.

This decision stemmed from the fact that the petitioner challenged the constitutional validity of aforementioned section independently, without first initiating an appeal before CESTAT. Consequently, Hon'ble Supreme Court directed that CESTAT should not raise the issue of limitation, as Court itself granted the petitioners the liberty to file an appeal.

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¹ Special Leave to Appeal (C) Nos. 2823-2824 of 2017

² Majesty legal is a LAW FIRM established in 2013 by Ms. Mahi Yadav. Objective of this legal update is to provide insights on law, statutes and is personal in nature, not to be deemed as legal advice.

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 2823-2824/2017

(Arising out of impugned final judgment and order dated 03-10-2016 in WP No. 7948/2015 03-10-2016 in WP No. 9148/2015 passed by the High Court Of Judicature At Bombay)

AJIT BAPU SATAM ETC.

Petitioner(s)

VERSUS

UNION OF INDIA & ANR.

Respondent(s)

Date : 13-02-2024 These petitions were called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE B.V. NAGARATHNA
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

For Petitioner(s) Mr. Uday Aditya Banerjee, Adv.
Mr. Yashvardhan Singh, Adv.
Mrs. Pragya Baghel, AOR

Ms. Ranjeeta Rohatgi, AOR
Mr. Vishal Banshal, Adv.

For Respondent(s) Mr. N. Venkatraman, A.S.G.
Mr. Mukesh Kumar Maroria, AOR
Mr. H.R. Rao, Adv.
Mr. Rajesh Ranjan, Adv.
Mr. V.C. Bharathi, Adv.
Mr. Shughosh Subramanyam, Adv.
Mr. Annirudh Sharma-ii, Adv.
Mr. Padmesh Mishra, Adv.

UPON hearing the counsel the Court made the following

O R D E R

We have heard Shri Uday Aditya Banerjee, learned counsel for the petitioner(s) and Shri V. C. Bharathi, learned counsel for the respondent(s)/Union of India.

During the course of submissions, it was brought to our notice that the petitioners have not yet filed an appeal. As the petitioners were aggrieved by the impugned provision

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mandating a pre-deposit of 7.5% of the penalty amount, the writ petitions were filed assailing the said provision, i.e., Section 129-E of the Customs Act, 1962.

After arguing the matter for some time, learned counsel for the petitioner(s) submitted that the petitioners may be permitted to withdraw the writ petitions and consequently these special leave petitions with liberty to file an appeal before the Customs Excise and Service Tax Appellate Tribunal (CESTAT) assailing the order or penalty on its own merits.

Learned counsel for the respondent, however, objected to any such liberty being given as the impugned order was passed by the Commissioner of Customs (Export) on 14.10.2014 and after nine years, such a liberty is being sought. Therefore, the special leave petitions may be simply dismissed.

We, however, note that the petitioners had every right to assail a provision of law as being un-constitutional by invoking Article 226 of the Constitution of India. However, in the instant case, the petitioners did so even in the absence of making any attempt to file an appeal before the Appellate Tribunal/CESTAT. In other words, challenge to the constitutional validity of Section 129-E of the Customs Act, 1962 has been made in a vacuum.

In the circumstances, we dispose of these special leave petitions by reserving liberty to the petitioners herein to withdraw the writ petitions filed by them before the High Court. Consequently, the impugned order would pale

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into insignificance as far as the petitioners herein are concerned. However, liberty is reserved to the petitioners herein to file an appeal under Section 129-E of the Customs Act, 1962 within a period of one month from today. If an appeal is filed within a period of one month from today, the CESTAT shall not raise the issue of limitation, since we have granted liberty to the petitioners to file an appeal.

The Special Leave Petitions are disposed of in the aforesaid terms.

Pending applications shall stand disposed of.

(NEETU SACHDEVA)
ASTT. REGISTRAR-cum-PS

(RAM SUBHAG SINGH)
COURT MASTER (NSH)