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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CUSAA 45/2011**

INTRADE IMPEX PVT. LTD Appellant
Through Mr. Suhail Dutt, Sr. Adv. with
Mr. Sankalp Goswami, Mr.
Navneet Panwar and Mr. Piyush
Kumar, Advs.

versus

COMMISSIONER OF CENTRAL EXCISE Respondent
Through Mr. Satish Kumar, Standing
Counsel.

CUSAA 46/2011

AKAY CONES PVT. LTD. Appellant
Through Mr. Suhail Dutt, Sr. Adv. with
Mr. Sankalp Goswami, Mr.
Navneet Panwar and Mr. Piyush
Kumar, Advs.

versus

COMMISSIONER OF CENTRAL EXCISE Respondent
Through Mr. Satish Kumar, Standing
Counsel.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE G.P.MITTAL

ORDER

24.10.2011

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These appeals under Section 130 of the Customs Act, 1962 (Act, for short) are directed against the order dated 1st September, 2010 disposing of the stay application filed by the appellants and the order dated 19th September, 2011 dismissing the rectification/modification application filed by the appellants.

2. By the impugned order dated 1st September, 2010, the

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appellants' applications for stay were partly allowed and the appellants were directed to deposit 50% of the customs duty as demanded by the under challenge order passed by the Commissioner.

3. It is stated at the Bar that the goods in question were imported in 2001-2003 and the total principal amount as per the order under challenge before the tribunal is Rs. 8.45 crores and Rs.8.69 crores in Intrade Impex Pvt. Ltd. and Akay Cones Pvt. Ltd. In addition, a penalty of equal amount has been levied and the appellants are also liable to pay interest. Penalty and interest have been completely waived.

4. Learned counsel for the appellants has submitted that the tribunal has failed to consider several aspects which were relevant and material for disposal of the stay application and in this connection he has drawn our attention to the application for rectification/modification, which has been disposed of by order dated 19th September, 2011. He submits that there are about 60 Bills of Entries, which were made subject matter of the show cause notice, but the Revenue did not supply copy of 17 Bill of entries. He further submits that in respect of two other Bills of Entries, the appellants had pleaded and submitted that in one case, the payment had been made at a higher value and in the second case department had not accepted the valuation and the matter was decided by the tribunal. It is urged that

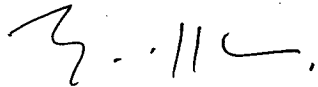
there has been violation of principle of natural justice as the tribunal has taken into consideration certain aspects mentioned in the records, though appellants have not inspected the records.

5. We have considered the aforesaid contentions. The tribunal in its order dated 1st September, 2010 has gone into great depth and detail and examined the allegations against the appellants, the material which was collected by the Revenue to show that it a case of “under invoicing” of imports, which were actually manufactured and sold by companies in USA and Belgium, but were shown as imported through traders from Singapore, Taiwan etc. The tribunal has referred to the evidence and material which has been relied upon by the authorities to justify and establish that in the present cases, customs duty was short levied to the extent of Rs.8.47 and Rs.8.67 crores because of the failure and maladroitness conduct of the appellants in “under invoicing” the goods. The tribunal has referred to the sale price/invoicing of the domestic customers/buyers.

6. We have also considered the contention of the appellants with regard to the so called lapses, lacuna and violation of principles of natural justice. The question relating to Bill of Entries and photocopies thereof is one aspect but import by the appellants and value declared can be established from other documents. The Revenue has submitted that the tribunal can examine records for their personal satisfaction. We

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do not think that the said aspects, justify interference by this Court in an appeal under Section 130 of the Act. The tribunal has substantially waived and has asked the appellants to deposit 50% of the customs duty. Penalty and interest have been completely waived. The waiver is substantial. No substantial question of law arises or requires consideration and accordingly the appeal is dismissed. It is clarified that the observations made above will not be binding on the tribunal. No prayer for extension of time to make payment is made.


SANJIV KHANNA, J.


G.P. MITTAL, J.

OCTOBER 24, 2011
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