IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.447 of 2014

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1. M/s. Bikaner Assam Road Lines India Ltd. through its Director cum Authorized Signatory Sushil Kumar Daga, Son of Sri Bhawar Lal Daga, 2nd Floor, Bhola Mension, H.B. Road, Fancy Bazar, P.S. Fancy Bazar, District Gauhati (Assam)
2. M/s Karni Trading Company, through its Proprietor Shanti Lal Bhansali, Son of Rewat Mal Bhansali, resident of Marwari Patti, P.S. Alipur Dwar, District Jalpaiguri (West Bengal)

.... Petitioners

Versus

1. The Union of India through Additional Director General, Directorate of Revenue Intelligence, Zonal Units, Lucknow, Uttar Pradesh
2. The Commissioner (Appeals), Custom, Central Excise & Service Tax, Central Revenue Building, Birchand Patel Path, Patna
3. The Additional Director, Directorate of Revenue Intelligence, Regional Unit, Patna
4. The Commissioner of Customs, 4th Floor, Central Revenue Building, Bir Chand Patel Path, Patna
5. The Additional Commissioner cum Adjudicating Authority, Central Revenue Building, Bir Chand Patel Path, Patna

.... Respondents

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Appearance :

For the Petitioners : Mr. Prabhat Ranjan, Advocate

For the Respondents : Mrs. Nivedita Nirvikar, Advocate

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 05-02-2015

Heard learned counsel for the petitioners and the respondents.

Petitioners are aggrieved by the order dated 01.11.2013 passed in Appeal No.398-399/PAT/CUS/ Appeal/2013 rejecting the appeal on being time barred in view of its filing after the time extended by this Court vide order dated 17.05.2013 passed in

C.W.J.C. No.1271 of 2013 having been expired.

Learned counsel appearing for the petitioners submits that, after passing of the aforesaid order dated 17.05.2013, M.J.C. No.3573 of 2013 was filed for modification of the order which was disposed of on 17.07.2013 extending the date of filing of the appeal till 05.07.2003 on noticing that after rectifying the defects the appeal was eventually filed on 04.07.2013.

Learned counsel appearing for the Customs Department submits that the petitioners never produced the modified order, therefore, the aforesaid order was passed by the appellate authority, whereas the counsel of the petitioners contends that even the otherside could not produce the same before the court below though the order concerned was passed in their presence.

Be that as it may, it is admitted position that the date of filing of appeal was extended till 05.07.2013 and, admittedly, the appeal was filed on 04.07.2013, therefore, the appeal was required to be heard on its own merit and in accordance with law.

As a result, this writ application succeeds. The order dated 01.11.2013, as contained in Annexure 4, is quashed. The petitioners would be required to appear along with a copy of this order on 12.02.2015. On that date the appellate authority will fix a date of hearing and, thereafter, dispose of the appeal on its own merit after giving reasonable opportunity to both the sides, expeditiously preferably within a period of two months.

(Dr. Ravi Ranjan, J)

Sanjay-II/-

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