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WPA 10926 of 2021

M/s. A.R. Stanchem & Anr.
Vs.
Union of India & Ors.

Mr. Abhrotosh Majumder, Ld. Sr. Adv.,
Mr. Arijit Chkraborty,
Mr. Nilotpal Chowdhury
... For the Petitioners.
Mr. K.K. Maiti,
Mr. Tapan Bhanja
... For the Revenue/Respondents.
Mr. Phiroze Edulji
... For the UOI.

Heard learned Advocates appearing for the parties at length.

In this writ petition the petitioners have challenged two folds action of the respondent/Custom authority. One is detention order on the goods in question and the second is order of restriction of sale in domestic tariff area on the ground of non-payment of interest on delayed payment of custom duty. The petitioners submit that legality and validity of the demand by way of interest in question is the subject matter of appeal filed on 6th May, 2021 which is pending before the Commissioner of Customs (Appeal). The petitioners have tried to explain the reason for delay in payment of the custom duty in question, from the pleadings as appears from paragraph 10 of the writ petition. In support of the contention of the petitioners that delay in making payment of custom duty was not deliberate and intentional and they could not make the payment because of some genuine difficulties in making payment of customs duty in question as they have explained in paragraph 10 of the writ petition which are hereunder:

"'That the petitioners could not make the payment since the Bank officials of State Bank of India, Main Branch, Kolkata refused to accept the payment on account of absence of the countersignature of the Customs Authorities in the T.R.6 Challan. The representative of the petitioner no.1 visited the office of the Commissioner of customs (preventive), Kolkata but no counter signature was provided by the concerned authority. Petitioners made necessary correspondence vide letter dated 16.03.2021 & 17.03.2021 in this regard when again they were advised under letter dated 17.03.2021 by the Deputy Commissioner of Customs, Barasat Customs Division, Kolkata to make online payment or in cash or in Demand Draft or in Banker's Cheque by Cash Department of the Commissionerate in terms of Standing Order No.1/2021 issued by the Principal Commissioner of Customs (Port), Kolkata when under letter dated 18.03.2021, the petitioners pointed out that the said Standing Order pertains to the Port Commissionerate and as such does not tally with the account details provided under the letter dated 24.02.2021 and hence, it was not possible for the petitioners to deposit the payment of Preventive Commissionerate into the Cash Department of Port Commissionerate. They prayed for name of beneficiary in case the department decides to receive payment through Account Payee Cheque."'

The petitioners have prayed for a direction on the respondent Nos. 3 and 5 to not to give effect to impugned order in question of restriction on domestic tariff area and to release the goods in question which has been detained. The petitioners also contend that they are not liable to pay the interest in question at all but since this issue is pending for final adjudication before the Appellate Authority, it will not be proper on the part of this court to make any observation on the merit of the said question pending in appeal. The sole question of law involved in this writ petition is that whether during the pendency of the said appeal, the petitioners are entitled for any interim relief as prayed for. It appears from a letter issued by the petitioners dated 17th June, 2021 being Annexure P-9 to the writ petition wherefrom it appears that the petitioners have agreed to make an upfront payment of Rs. 1 crore subject to final adjudication of the Appellate Authority on the issue of interest in question involved therein for withdrawal of the prohibition of DTA clearance and for withdrawal of detention of the Vehicles No.NL-02Q/4839 and NL-01L/5574 carrying LABSA under detention Memo dated 07.06.2021 and Tank No.3(from left) containing 22.323 MT of Sulphuric Acid under detention Memo dated 18.06.2021.

Mr. Maiti, learned Advocate, appearing for the Revenue/respondents opposes this writ petition by making submission that pleading made in paragraph 10 of the writ petition is not sustainable in view of the fact that several notifications were issued from time to time which were public documents with regard to mode of payment of custom duty before the appropriate jurisdictional authority.

Considering the submission of the parties, I am of the view that keeping this writ petition pending will be of no use because the sole dispute with regard to demand of interest in question and its validity is yet to be adjudicated by the Appellate Authority and the Appellate Authority should go in detail both on facts and law at the time of adjudication of the liability of payment of the said interest on the part of the petitioners and accordingly, the learned Appellate Authority is requested to consider and dispose of the pending appeal in question within four weeks from the date of communication of this order without granting unnecessary adjournments, by passing a reasoned and speaking order strictly in accordance with law and after giving proper opportunity of hearing to the petitioners or their authorised representatives.

In the meantime, there will be an unconditional stay of operation of the orders impugned dated 7th June, 2021(at page 72 of the writ petition), 18th June, 2021(at page 93 of the writ petition), 7th June, 2021(at page 16 of the supplementary affidavit) and 15th April, 2021(at page 49 of the writ petition) on condition of making payment of Rs.1 crore by the petitioners by way of demand draft to the respondents concerned, by 12th of July, 2021 and if such payment is made by the petitioners within the time as indicated, this stay will be continued till the disposal of the pending appeal in question and within two days after the date of receipt of such payment of rupees one crore, the respondents concerned shall release the goods in question and lift the impugned restriction of sale in DTA. This payment of interest will be subject to final outcome of the pending appeal in question.

Let it be recorded that this court has not gone into the merits of the case and the Appellate Authority is free to decide the appeal on its own merit and strictly in accordance with law.

Since no affidavit-in-opposition has been filed by the respondents, the allegations contained in the writ petition are deemed not to have been admitted by the respondents.

WPA 10926 of 2021 is disposed of.

(Md. Nizamuddin, J.)