OD – 35 & 36

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (CUSTOMS)
ORIGINAL SIDE

IA NO:GA/1/2020
(OLD NO. GA/138/2020)
IN
CUSTA/1/2020

THE COMMISSIONER OF CUSTOMS [PREVENTIVE], W.B., KOLKATA
VS.
M/S. KANAV INTERNATIONAL

AND

IA NO:GA/2/2020
(OLD NO. GA/139/2020)
IN
CUSTA/1/2020

THE COMMISSIONER OF CUSTOMS [PREVENTIVE], W.B., KOLKATA
VS.
M/S. KANAV INTERNATIONAL

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
A N D
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date: 6th December, 2021.

Appearance :
Ms. S. Gupta, Advocate
...for the appellant.

Mr. A. Chakraborty, Advocate ,
Mr. N. Chowdhury, Advocate,
Mr. Prabir Bera, Advocate
... for the respondent.

RE: IA NO:GA/1/2020 (OLD NO. GA/138/2020)

The Court : We have heard the learned standing counsel for the appellant and the learned counsel for the respondent/assessee.

There is inordinate delay in filing the appeal by the Revenue challenging the order passed by the Tribunal. We are of the view that interest of justice would demand that the delay be condoned as in identical issues this court in the case of *Commissioner of Customs [Port], Kolkata vs. M/s. Haldia Petrochemicals Ltd.* has allowed the Revenue's appeal and restored the appeal back to the file of the Tribunal to keep the same pending and await the decision of the Hon'ble Supreme Court in an appeal filed against the decision of the High Court of Delhi in the case of *Mangali Impex Ltd. vs. Union of India [2016 (335) E.L.T. 605 (Del.)].* Therefore, we exercise discretion and condone the delay.

The application, GA/1/2020 [Old GA No:138/2020] is disposed of accordingly.

RE: CUSTA/1/2020

This appeal filed by the Revenue under section 130 of the Customs Act, 1962 [the Act] is directed against the order passed by the Tribunal whereby the Tribunal allowed the appeal and set aside the order passed by the adjudicating authority and remanded the matter back to the file of the Assessing Officer. The Revenue has raised the following substantial question of law for consideration :

1. Whether the Tribunal was justified in remanding the matter back for a fresh decision when the matter was subjudice before the Hon'ble Supreme Court in light of the stay order passed in Mangali Impex Ltd. vs. Union of India [2016 (335) E.L.T. 605 (Del.)] ?

We have heard learned counsel for the parties. Admittedly, the appeal filed by the Revenue as against the decision of the High Court of Delhi in the case of *Mangali Impex Ltd. vs. Union of India [2016 (335) E.L.T. 605 (Del.)]* is pending before the Hon'ble Supreme Court as 2016 (339) E.L.T. A 49 [SC]. Therefore, if such is the factual position, then the Tribunal ought to have kept the matter pending on its file instead of setting aside the adjudication order and remanded the matter back to the adjudicating authority and await the decision of the Hon'ble Supreme Court. Identical impugned order was tested for its correctness by the Hon'ble Division Bench of this court in *Commissioner of Customs [Port], Kolkata vs. M/s. Haldia Petrochemicals Ltd.* by judgement dated 24th June, 2019. The appeal filed by the Revenue was allowed and, consequently, the appeal filed by the respondent before the Tribunal was restored to its file and the Tribunal was directed to await the decision of the Hon'ble Supreme Court. The operative portion of the judgement reads as follows :

"The undisputed position is that two show cause notices dated 10th April, 2008 were issued to the appellants by the Directorate of Revenue Intelligence [' DRI' for short] and original adjudication order was passed on 14th October, 2014. The final order was challenged before the CESTAT, who have vide impugned order dated 14th July, 2017, remanded the matter back to the Adjudicating Authority to await the decision of the Supreme Court in Mangli Impex Limited [supra]. The appellants and respondents have assertively highlighted that the original order was passed after more than 6 ½ years. Thus, remand to the original adjudicating authority at this stage, they submit, would cause prejudice and harassment to the appellants and respondents. The submission is that the contentions of the appellants should be decided on merits by CESTAT including imposition of penalty and right of the DRI to issue show cause notice. The appellants accept that the adjudication would be uninfluenced by the judgement in the case of Mangli Impex Limited [supra], operation of which has been stayed by the Supreme Court. In other words, the Tribunal would independently apply its mind on the question of jurisdiction.

In view of the aforesaid position, the substantial question of law is answered in favour of the appellants and the order of the Tribunal dated 6th July, 2017 is set aside. The Tribunal will decide the appeals on merits, including the question of jurisdiction of the officers of DRI to issue the show cause notice, without being influenced by the decision of the Delhi High Court in the case of Mangli Impex Limited [supra], which has been stayed by the Supreme Court.

We clarify that we have not expressed any opinion on the merits of these appeals or on the procedure that the Tribunal should adopt.

> These appeals are disposed of in the above terms. There would be no order as to costs.”

Thus, in the light of the above, the appeal filed by the Revenue is allowed and the order passed by the Tribunal is set aside and the appeal is restored to the file of the Tribunal with a direction to the Tribunal to await the decision of the Hon’ble Supreme Court in the appeal filed against the decision of the High Court of Delhi in the case of Mangali Impex Ltd. [supra]. Consequently, the substantial question of law is answered in favour of the Revenue.

Accordingly the other connected application also stands disposed of.

(T. S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

pkd/RS