ORDER SHEET

WPO 141 of 2020
IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Income Tax)
ORIGINAL SIDE

M/S. FLEETING VANIJYA PVT. LTD. & ANR.
VS.
UNION OF INDIA & ORS.

BEFORE:
The Hon'ble JUSTICE ARINDAM MUKHERJEE
Date: 14th January, 2021

Mr. Biswajit Mukherjee, Mr. Soumyajit Mishra,
Advocates for the petitioners.
Mr. K. K. Maiti, Mr. B. P. Banerjee, Advocates
for the respondents.

The Court : Affidavit of service filed in Court today is taken on record.

The petitioner imported LED decoration rope light, LED decoration strip light, LED Flood light and Free spare cords. The value of the goods in the bill of entry furnished by the petitioner was disputed by the Customs Authority. The Customs Authority ultimately held that the goods are of higher value than that disclosed in the bill of entry furnished by the petitioner. The petitioner had to get the goods released by paying duty on the value arrived at by the Customs Authority under the provisions of Section 17(4) and (5) of the Customs Act, 1962 (hereinafter referred to as the said Act). The petitioner says that the concerned officer did not pass any speaking order to support the assessment as to the re-assessment so made for the purpose of realising duty under the provisions of Section 17(5) of the said Act. The petitioner repeatedly requested for a speaking order but all such attempts were in vein. Ultimately the petitioner filed an appeal before the Commissioner of Customs (Appeals), the respondent no.2 under the provisions of Section 128 of the said Act. In the process of running after the authorities for a speaking order, the petitioner delayed in filing the appeal by 10 days. The respondent no.2 by an order dated 3rd January, 2020 refused to condone the delay by holding "no sufficient ground is shown to late filing the appeal petition, delay not condoned". The petitioner being aggrieved by such order has filed the present writ petition.

The learned Advocate for the respondents submits that the Tribunal, if approached, should hear out the appeal including the point of limitation.

After considering the submissions made by the parties and the materials on record, I find that the petitioners' cause as on date is the order refusing to condone the delay passed by the respondent no.2 by not exercising the power given to condone the delay under Section 128 of the said Act. This order is appellable under Section 129A of the said Act. The petitioners, however, invite this Court in exercise of its writ jurisdiction to set aside the order passed by the respondent no.2. The petitioner says that 60 days is the timeframe provided for preferring an appeal to the respondent no.2. The respondent no.2 is empowered to condone the delay for a maximum period of 30 days after expiry of the 60 days initial period, if sufficient cause is shown. The delay according to the petitioner was for non availability of the speaking order which, the respondent no.2 has held as "no sufficient ground shown" in an erroneous manner.

Limitation is a mixed question of facts and law. The Appellate Forum will be in a better position to appreciate the factual aspect in respect of the cause shown by the petitioner before the respondent no.2 in condoning the delay than this Court in exercise of its writ jurisdiction even if affidavits are called for.

In the facts and circumstances as aforesaid, the petitioners are permitted to approach the Tribunal by preferring an appeal as against the order of the respondent no.2 dated 3rd January, 2020 within 12th February, 2021. It is made clear that if the petitioner approaches the Tribunal within the timeframe provided, the said Tribunal will hear out the appeal on merits without going into the delay in filing the appeal against the order dated 3rd January, 2020. This is done specifically for the reason that the writ petition was filed on 27th February, 2020 challenging the order dated 3rd January, 2020. The appeal against the order dated 3rd January, 2020 was required to be filed within 90 days from the date of the order subject to any statutory exemption. The said time period expired in or about 2nd April, 2020 i.e. amidst the national lockdown. The petitioner having filed the writ petition on 27th February, 2020 cannot also be blamed for any intentional delay. The petitioner is also entitled to the benefit of Section 14 of the Limitation Act, 1963, in the view of the fact that the writ petition was pending till date. Delay is also condoned keeping in mind the orders passed by the Hon'ble Supreme Court of India extending the limitation period in proceeding before Court owing to the pandemic.

The writ petition stands disposed of accordingly.

Since I have not called for any affidavit, the allegations made in the petition are deemed to have not been admitted by the respondents.

(ARINDAM MUKHERJEE, J.)

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