OD-11 & 12

ORDER SHEET

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

IA NO: GA/2/2018
(OLD NO: GA/1180/2018)
IN
CUSTA/12//2018
CHANDRA SEKHAR JHA
VS.
UNION OF INDIA & ANR.

AND

IA NO: GA/2/2018
(OLD NO: GA/1182/2018)
IN
CUSTA/13/2018
RANJAN KUMAR MISHRA
VS.
UNION OF INDIA & ANR.

BEFORE:
The Hon'ble JUSTICE T. S. SIVAGNANAM
AND
The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA
Date : December 16, 2021.

[Via Video Conference]

Appearance:
Mr. Arnab Mukherjee, Advocate
Ms. Madhurima Mukherjee, Advocate
... for the appellant/Revenue

Mr. K.K. Maity, Advocate
..for respondent

The Court : These appeals are directed against two separate orders both dated 21.8.2017 passed by the Customs, Excise and Service Tax

Appellate Tribunal, Eastern Zonal Bench, Kolkata in Customs M.A. (COD) No. 75302 of 2017 in Customs Appeal No. 75707 of 2017 and Customs Stay Application No. 75301 of 2017 in Customs Appeal No. 75706 of 2017 respectively.

Both the appellants had filed the appeal against the common order passed by the Commissioner of Customs (Preventive), West Bengal, Calcutta in Order-in-Original No. 45/CUS/CC(P)/WB/2015 dated 23.11.2015. By the said order, the Commissioner of Customs had imposed Rs.75 lakhs as penalty on the appellant Chandrasekhar Jha and Rs.25 lakhs as penalty on the appellant Ranjan Mishra for their active participation in smuggling operation by invoking the power under Section 112(b) of the Customs Act, 1962 (the Act). The appellants filed the appeals before the Tribunal which have been dismissed by the Tribunal on the ground that the appellants have not complied with the mandatory pre-deposit as required to be complied with under Section 129E of the Act. The appellants have challenged the said order before this Court. The appellants have contended that the orders passed by the Tribunal suffer from manifest error and the Tribunal ought to have considered both the appellants were only courier boys and they have no means to effect such huge amount of pre-deposit to enable them to prosecute the appeals before the Tribunal. Therefore, it is submitted that this Court may consider the indigenous circumstances of both the appellants and waive the payment of pre-deposit. We have considered the submissions made by the learned Counsel appearing for the appellant. Section 129E of the Act deals with deposit of certain percentage of duty demanded or penalty imposed before filing the appeal; the provision states that the Tribunal shall not entertain any appeal if the appellant has not deposited required percentage of the duty in case where duty or duty and penalty are under dispute or penalty is in dispute, in pursuance of the decision or order appealed against. The second proviso to Section 129 E curves out an exception only in respect of appeals which were pending before the appellate authority prior to the commencement of Finance (2) Act of 2014. Admittedly, appeals filed by the appellants before the Tribunal are not covered under the second proviso. If that is so then there is no discretion vested with the Tribunal to waive the mandatory pre-deposit contemplated under the Act. Therefore, we find that there is no error in the order passed by the Tribunal.

In the result, the appeals fail and are dismissed.

Considering the submission of the learned Counsel for the appellants that the appellants are in indigenous circumstances, we grant one opportunity to the appellants to pay the mandatory pre-deposit not later than 25th February, 2022. If such pre-deposit is made within the said time then Tribunal may take on file the appeal and decide the same on merits in accordance with law. In the event, the appellants do not comply with the aforementioned liberty granted by this Court within the time fixed the benefit of this order will not enure to the appellants and the appeals would stand automatically dismissed without reference to this Court.

Consequently the stay applications shall also be dismissed.

Mr. Maity is directed to accept notice on behalf of the respondent and the respondent/department shall regularise the appearance.

(T. S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

RS/GH.