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ORDER SHEET

WPO 874 of 2021
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

VINOD KUMAR JAIN
Vs.
COMMISSIONER OF CUSTOMS(PORT) AND ORS.

BEFORE:
The Hon'ble JUSTICE MD. NIZAMUDDIN
Date : 29th September, 2021.

(Via Video Conference)

Mr. Sudhir Mehta,Adv.
Mr. Anurag Bagaria, Adv.
...for the petitioner
Mr. K.K. Maiti, Adv.
Mr. Abhradip Maity, Adv.
...for the respondents

The Court: In this writ petition petitioner is aggrieved by the impugned action of the respondent Customs Authorities concerned in not allowing warehousing of the goods in question and also not considering the petitioner's prayer for re-testing of the goods in question inspite of the order of the Commissioner of Customs (Appeals) dated 11th August, 2021 being annexure P-9 to the writ petition. Petitioner submits that this order of the Appellate Authority is binding upon the subordinate authority. It has brought to my notice that during the pendency of this writ petition one of the grievances of the petitioner has been redressed by the order of the respondent Authority concerned dated 28th September, 2021 by which prayer of the petitioner for warehousing of the goods in question has been considered but prayer of the petitioner for re-testing of the goods in question in compliance of the order dated 11th August, 2021 by the Appellate Authority has still not been done. Learned advocate for the petitioner relies on a decision of the co-ordinate Bench of this Court in the case of “Umbar Marketing Pvt. Ltd. vs. Commissioner of Customs (Port)” reported in 2016 (338) E.L.T. 362 (Cal.).

Learned advocate appearing for the respondent Customs Authorities defends that the impugned action of the Customs Authorities by taking the plea that the impugned order of the Appellate Authority is appealable and the time is still available and has not expired for filing further appeal before the Tribunal against the aforesaid order of the Commissioner of Customs (Appeals) dated 11th August, 2021. Learned advocate appearing for the respondent Customs Authorities also submits that the order of this Court in the case of Umbar Marketing Pvt. Ltd. (supra) is not applicable to the facts of this case and contends that in that case both the parties were agreed for re-testing. I fail to understand that why the department will take different stand for different parties. Furthermore, Mr. Mehta submits that judgment passed in Umber Marketing Pvt. Ltd. (supra) has been accepted by the respondent Customs Authorities and they have not further challenged the same.

Considering the submissions of the parties and respectfully following the decision of the co-ordinate Bench of this Court in the case of Umber Marketing Pvt. Ltd. (supra) as well as in view of the order of the Appellate Authority dated 11th August, 2021 part of which has already been complied with by the subordinate authority and yet taking the stand that the respondent Customs Authorities will not comply the same since it wants to challenge the same before the Tribunal, is not sustainable in law.

This writ petition being WPO 874 of 2021 is disposed of by directing the respondent concerned to allow the re-testing of the goods in question within a week from date at the expense of the writ petitioner and in the event if the test report goes against the petitioner, the amount deposited by the petitioner for re-testing will be forfeited.

This Court has not gone into the merits of any other claim made by the petitioner in this writ petition and he is free to initiate appropriate proceeding before the appropriate forum in this regard.

WPO 874 of 2021 is disposed of accordingly.

(MD. NIZAMUDDIN, J.)

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