IN THE HIGH COURT OF JUDICATURE AT CALCUTTA

SPECIAL JURISDICTION

ORIGINAL SIDE

HEARD ON : 04.03.2022
DELIVERED ON : 04.03.2022

CORAM

THE HON'BLE MR. JUSTICE T.S. SIVAGNANAM

AND

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

IA NO:GA/1/2021
In
CUSTA/6/2021

COMMISSIONER OF CUSTOMS [PORT], KOLKATA
VS.
M/S. AMAR IRON UDYOG LIMITED
....

IA NO:GA/2/2021
In
CUSTA/6/2021

COMMISSIONER OF CUSTOMS [PORT], KOLKATA
VS.
M/S. AMAR IRON UDYOG LIMITED
....

Appearance :-
Mr. K. K. Maity, Adv.
Mr. B. P. Banerjee, Adv.

...For the Appellant

Mr. N. K. Chowdhury, Adv.

...For the Respondent

JUDGMENT

(Judgment of the Court was delivered by T.S. SIVAGNANAM, J.)

RE: IA NO:GA/1/2021

1. We have heard Mr. K. K. Maity, learned senior standing counsel along with Mr. B. P. Banerjee, learned junior standing counsel for the appellant/revenue and Mr. N. K. Chowdhury, learned counsel for the respondent.

2. There is a delay of 349 days in filing this appeal. From the relevant dates we find that the appellant department would be entitled to the benefit of the order passed by the Hon'ble Supreme Court extending the period of limitation for filing the appeal. Therefore, the petition is allowed and the delay in filing the appeal is condoned. Accordingly, the application, IA No:GA/1/2021 stands disposed of.

RE: CUSTA/6/2021

3. This appeal by the revenue filed under Section 129B of the Customs Act, 1962, (the Act, in brevity) is directed against the order passed by the Customs, Excise and Service Tax Appellate Tribunal, EZB, Kolkata, (Tribunal) in final order No.76293 of 2019 dated 27.09.2019. The revenue has raised the following substantial questions of law for our consideration.

a. Whether the Learned Tribunal's impugned order in rejecting the Department's appeal on monetary limit is without considering the exclusions made under Board's Instruction bearing F.No.390/Misc./163/2010-JC dated 17.12.2015, and without containing any reasons and grounds for non-applicability of the exclusions herein provided ?

b. Whether there has been inherent jurisdictional error committed by the Learned Tribunal in dismissing the appeal of the appellant without arguing cogent reasons and grounds on facts and law, which is in violation of the principles of natural justice ?

c. Whether the Respondent having accepted the assessment order is entitled to maintain a refund application and thereby approbate and reprobate at the same time ?

4. We have heard Mr. K. K. Maity, learned senior standing counsel along with Mr. B. P. Banerjee, learned junior standing counsel for the appellant/revenue and Mr. N. K. Chowdhury, learned counsel for the respondent.

5. The Tribunal by impugned order has dismissed the appeal filed by the revenue on the sole ground that the case is below the monetary limit of Rs.10 lakh, which has been notified by the Board in its Instruction dated 17.12.2015. The revenue is before us by contending that the issue involved in this case is one of refund and in such cases the litigation policy cannot be made applicable. In this regard, the attention of this Court is drawn to the notification dated 17.12.2015 which states that in paragraph 3 of the Instruction dated 17.08.2011

a sub-clause (c) shall be added which shall read as “classification and refunds issues which are of legal and/or recurring nature”. By relying upon the said clause it is submitted by the learned senior standing counsel for the revenue that the issue involved being one of refund, the monetary policy will not apply and the appeal should have been heard by the Tribunal on merits. The learned counsel for the respondent would contend that though it may be true that the issue relating to the refund, may be the subject matter in the assessee’s case, it is not a legal issue or an issue of recurring nature. Therefore, it is submitted that the Tribunal rightly applied the monetary policy and dismissed the appeal. On going through the order passed by the Tribunal we find that the Tribunal has not discussed as to whether the clause 2 of the Notification dated 17.12.2015 inserting sub-clause (c) to the Instruction dated 17.8.2011 would apply to the case on hand or otherwise. In the absence of any such discussion, we cannot examine the correctness of the order of the Tribunal as to whether the issue of refund is not a legal issue or whether it is not an issue of recurring nature. Therefore, we are of the view that this aspect of the matter has to be considered by the Tribunal and thereafter a decision has to be taken. In the event the Tribunal is convinced that the monetary policy would not apply to the case on hand then it goes without saying that the Tribunal should take a decision on merits. In any event, we do not wish to express any opinion on the merits and we leave it open to the tribunal to take a decision afresh in the matter after hearing the parties for which purpose we are inclined to remand the matter back to the Tribunal.

6. For the above reasons, the appeal is allowed. The order passed by the Tribunal is set aside and the matter is remanded back to the Tribunal to hear the matter afresh and take a decision in accordance with law bearing in mind the observations made by us in the preceding paragraphs. Consequently, the substantial questions of law are left open.

6. The stay application, IA NO.GA/2/2021 also stands disposed of.

(T.S. SIVAGNANAM, J.)

I agree.

(HIRANMAY BHATTACHARYYA, J.)

Pintu kumar Das/Subrata Pal
AR(CR)