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IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION
ORIGINAL SIDE

CUSTA/2/2009
ICI INDIA LIMITED
VS.
THE COMMISSIONER OF CUSTOMS (PORT), KOLKATA & ORS.

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 11th November, 2022

Appearance :
Mr. Abhijit Chatterjee, Sr. Adv.
Mr. A. Basu, Adv.
Mr. S. Boral, Adv.
...for the appellant.

Mr. Bhaskar Prosad Banerjee, Adv.
...for the respondents.

The Court : This appeal filed by the revenue under Section 130 of the Customs Act, 1962 (the Act, for brevity) is directed against the order dated 14th October, 2008 passed by the Customs, Excise and Service Tax Appellate Tribunal, Eastern Regional Bench in Customs Appeal No.C/566/05-CUS.

The appeal was admitted on 8th July, 2009 on the following substantial questions of law:

i) Whether the Tribunal had correctly appreciated and applied the ratio of the decision reported in (2005) 184 ELT 339 and the decision of the Calcutta High Court in the case of Commissioner of Customs vs. Leader Valve Limited, reported in 2007(218) ELT 349 read with the judgment and order of the Hon'ble Supreme Court of India on appeal reported in 2008 (227) ELT A29 as also other decisions, which have been relied upon on behalf of the appellate company?

ii) Whether the Tribunal substantially erred in law in failing to appreciate that the period of limitation provided under Section of the Customs Act was not invocable in the present case?

We have heard Mr. Abhijit Chatterjee, learned senior counsel appearing for the appellant/assessee and Mr. Bhaskar Prosad Banerjee, learned standing counsel appearing for the respondent/revenue.

It is not disputed before us that the substantial questions of law which have been framed for consideration were considered by the Hon'ble Supreme Court in a recent decision in the case of Munjal Showa Ltd. –vs.- Commissioner of Customs and Central Excise (Delhi-IV) reported in 2022 SCC Online SC 1296 and the said questions were answered against the assessee in the following terms:

"15. From the judgment and order passed by the Tribunal and even from the findings recorded by the Department, it has been found that the DEPB licenses/Scripps, on which the exemption benefit was availed of by the appellant[s] [as buyers of the forged/fake DEPB licenses/Scripps] were found to be forged one and it was found that the DEPB licenses/Scripps were not issued at all. A fraud was played and the exemption benefit was availed on such forged/fake DEPB licenses/Scripps.

16. In that view of the matter and on the principle that fraud vitiates everything and such forged/fake DEPB licenses/Scripps are void ab initio, it cannot be said that the Department acted illegally in invoking the extended period of limitation. In the facts and circumstances, the Department was absolutely justified in invoking the extended period of limitation.

17. *It is also required to be noted that the moment, the appellant[s] was/were informed about the fake DEPB licenses, immediately they paid the Customs Duty, may be under protest. The Customs duty was paid under protest to avoid any further coercive action. Be that as it may, the fact remains that the DEPB licenses/Scripps on which the exemption was availed by the appellant[s] was/were found to be forged one and, therefore, there shall be a duty liability and the same has been rightly confirmed by the Department, which has been rightly confirmed by the Tribunal as well as the High Court.*

18. *Now, so far as the submission on behalf of the buyer[s] – appellant[s] relying upon the decision of this Court in the case of Aafloat Textiles India Private Limited [supra] is concerned, whether the buyer[s] had a knowledge about the fraud or the forged/fake DEPB licenses/Scripps and whether the appellant[s] – buyer[s] was/were to take requisite precautions to find out about the genuineness of the DEPB licenses/Scripps which they purchased, would have a bearing on the imposition of the penalty, and has nothing to do with the duty liability. It is to be noted that in the present case so far as the penalty proceedings are concerned, the matter is remanded by the Tribunal to the adjudicating authority, which is reported to be pending."*

In the light of the decision of the Hon'ble Supreme Court, the substantial questions of law admitted for consideration have to be answered against the appellant.

Accordingly, the appeal stands dismissed and the substantial questions of law are answered against the appellant.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

Pkd/S.Pal