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APO/216/2019
IA No.GA/1/2018(Old No.GA/1386/2018)
IA No.GA/2/2018(Old No.GA/1387/2018)

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

COMMISSIONER OF CUSTOMS (PREVENTIVE)

-Versus-

SHRI BIPAD BHANJAN SARKAR & ORS.

Appearance:
Mr. Uday Shankar Bhattacharyya, Adv.
Mr. Bhaskar Prasad Banerjee, Adv.
...for the appellant.

Mr. Arijit Chakraborty, Adv.
...for the respondent.

BEFORE:
The Hon'ble JUSTICE T.S. SIVAGNANAM
-And-
The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 10th November, 2022.

The Court: We have heard Mr. Bhattacharyya, learned standing counsel appearing for the appellant/department and Mr. Arijit Chakraborty, learned advocate appearing for the respondent.

We are informed by the Registry that the case file is not traceable. Therefore, we directed the learned Advocates for the appellant to furnish photocopies of their case file which shall be treated as original till the original file is traced out.

This intra-Court appeal is directed against the order dated 19th June, 2017 passed in WP No.587 of 2011. The appellant/department is aggrieved by the order and direction issued by the learned Single Bench in directing the appellant/department to pay interest on the sum of Rs.7 lakh for the period from April 5, 2008 till January 29, 2010 at the rate of 10% per annum.

On going through the facts and circumstances of the case, we find that the learned Single Bench was fully justified in granting interest. We support such conclusion with the following reasons:

Thousand Kgs. of sugar belonging to the appellant was seized by BSF and handed over to the customs authorities. The same were kept in a godown sealed under the custody of the customs authority. Ultimately, when the goods were released, there was a short-fall of 73.35 Kgs. For the short-fall the respondent had to be compensated at the rate of Rs.14 per kg.

The learned Single Bench had directed that the Customs Authority should make the payment within four weeks from the date of communication of the said order in the writ petition. The department is aggrieved by the further direction issued to pay interest on the sum of Rs.7 lakh.

On going through the order passed in the writ petition we find that the bank guarantee furnished by the respondent to the tune of Rs.7 lakh was encashed by the department when the appeal was pending before the appellate Authority. The learned single Bench also noted that the respondent had succeeded before the tribunal. In all fairness if the appeal is pending before the appellate Authority, the Customs Department ought to have directed the respondent to keep the bank guarantee alive and their conduct in encashing the bank guarantee does not augur well. In any event, we find that the discretion exercised by the learned single Bench cannot be faulted with nor can it be stated to be perverse for us to interfere and substitute our views. Thus, no ground has been made out by the appellant to interfere with the impugned order.

Accordingly, the appeal (APO/216/2019) fails and dismissed. The time limit fixed by the learned single Bench for compliance of the direction issued therein is extended by four weeks from the date of receipt of a server copy of this order.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

A/s./S.Das./GH/pkd