O-129

CUSTA/73/2018

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction
ORIGINAL SIDE

THE COMMISSIONER OF CUSTOMS (PREVENTIVE)

-Versus-

M/S. WAHIDUL ISLAM

Appearance:
Mr. K. K. Maiti, Adv.
...for the appellant.

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

BEFORE:
The Hon'ble JUSTICE T.S. SIVAGNANAM
-And-
The Hon'ble JUSTICE SUPRATIM BHATTACHARYA

Date : 14th September, 2022.

The Court : This appeal filed by the revenue under Section 130 of the Customs Act, 1952 is directed against the final order dated 12th October, 2017 passed by the Customs, Excise and Service Tax Appellate Tribunal, East Zonal Bench, Kolkata (the 'Tribunal') in Customs Appeal No.75427/2017 and CO No.75522/2017.

The appeal is admitted to decide the following substantial question of law:

"Whether there are any legal principles circumscribing the use of discretion and whether the learned Tribunal had exercised its discretion correctly by reducing the redemption fine and personal penalty on the respondent importer ?"

We have heard Mr. K. K. Maiti, learned standing counsel for the appellant/department and Mr. Arijit Chakraborty, learned counsel assisted by Mr. Nilotpal Chowdhury learned Advocate for the respondent.

The respondent was intercepted by the DRI Officers with six packages containing micro SD cards of foreign origin in a bus plying between Petrapole and Kolkata. The goods were seized and proceedings were initiated by issuance of show cause notice dated 3rd May, 2013 proposing confiscation of the goods and imposition of penalty. The adjudicating authority namely, the Commissioner of Customs (Preventive), confiscated the goods and imposed redemption fine of Rs.7 lakhs and penalty of Rs.5 lakhs under Section 112(a) and 112(b) of the Act. the revenue filed appeal before the tribunal and the respondent also filed cross objection.

One of the grounds canvassed before the learned Tribunal was whether the Commissioner of Customs could have directed redemption of goods on payment of redemption fine when the goods were already sold through e-auction. Further, it was contended that the Commissioner has not issued any direction for appropriation of the sale proceeds towards the redemption fine and penalty imposed in the adjudication order.

Further the Commissioner had held not mentioning the duty payable under Section 125(2) of the Act. The learned Tribunal took note of the anticipated fact that ceased goods were already been sold by e-auction and the question of allowing the respondent to clear the goods on payment of redemption fine is impossible. With regard to the order of confiscation and the reasons set out by the adjudicating authority the Tribunal was not inclined to interfere. However, the Tribunal took note of the fact that the goods having already sold exercised its discretion and reduced the redemption fine of Rs.4 lac and penalty of Rs. 1 lac. The question of payment of duty would not arise since the goods cannot be allowed for clearance as it is not available and has been sold by e-auction. So far as the power of the Tribunal is concerned in terms of Section 129B(1) of the Act the Tribunal has power to confirm, modify or annul the decision or order appealed against or may refer the case back to the authority which passed the said decision or order with such direction of the learned Tribunal may think fit for fresh adjudication or decision as the case may be after taking additional evidence, if necessary. Thus the power exercisable by the original authority undoubtedly can be exercised by the learned Tribunal and, therefore, there can be no error pointed out as to the exercise of the power of the Tribunal in either modifying or reducing the quantum of redemption find. In our considered view, the exercise of discretion has not been shown to be perverse for us to interfere in the matter, more particularly when Tribunal has considered the factual position and granted relief.

Learned standing Counsel for the revenue placed reliance on the decision in the case of *COMMISSIONER OF CUSTOMS CHENNAI VS. NITISH TOOLS PVT. LTD.* 2014 302 ELT 228 for the proposition the penalty which ought not to have been reduced. However, we find the said case factually distinguishes as in the said case the importer did not challenge the order of confiscation and the enhanced value of the case as enhanced by the department was admitted by the importer. Therefore, the said decision cannot be applied to the said case on hand.

In the result, the appeal is dismissed and the specific question of law is answered against the revenue.

(T.S. SIVAGNANAM, J.)

(SUPRATIM BHATTACHARYA, J.)

S.Das/As./GH/pkd.