OD – 2

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/133/2022
IA NO:GA/1/2022, GA/2/2022

CHEVIOT COMPANY LIMITED
VS.
ASSISTANT COMMISSIONER OF CUSTOMS, AIR CARGO SECTION & ORS.

BEFORE :

THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE PRASENJIT BISWAS
Date : SEPTEMBER 2, 2022.

Appearance:
Mr. P.K. Das, Mr. Subrata Mukherjee and Ms. Indrani Banerjee, Advs.
...for appellant.

Mr. Bhaspar Prosad Banerjee, Mr. Tapan Bhanja, Advs.
... for Respondent

The Court : We have heard Mr. P.K. Das, learned Counsel appearing for the appellant and Mr. Bhaskar Prosad Banerjee, learned Counsel appearing for the respondent.

We have perused the affidavit filed in support of the application for condonation of delay and we find sufficient causes have been shown for not being able to prefer the appeal within the period of limitation. Accordingly, the delay in filing the appeal is condoned and the application for condonation of delay being GA 1 of 2022 stands allowed.

This intra-court appeal is directed against the order dated 10th June, 2022 passed in WPO No. 427 of 2018. The appellant had filed the writ petition praying for issuance of a writ of mandamus to recall the order passed by the authority rejecting the appellant's claim for refund to the extent of Rs.1,26,42,928/-. The adjudicating authority had passed an order dated 18th May, 2018 sanctioning refund of Rs.49,22,139/- which, according to the authority, falls within the limitation of one year under Section 27(2) of the Customs Act, 1962 on the grounds which have been specified in the order. Since the appellant did not get the entire refund amount as prayed for, for the deficit amount of Rs.1,26,42,928/-, it had filed the writ petition.

Learned Single Bench after hearing the learned Advocates appearing for the appellant and the respondent department was of the opinion that the order passed by the authority was a non-speaking order and therefore, set aside the order dated 18th May, 2018 and remanded the matter back to the respondent to reconsider and pass a fresh order after giving an opportunity of hearing to the appellant or its authorised representative and after considering and dealing with the judgments relied upon by the appellant in support of their contention. A time-frame of eight weeks was also fixed. Pursuant to such direction, the authority namely, the Assistant Commissioner of Customs, Air Cargo Refund Section, Customs House, Kolkata had passed order dated 4th August, 2022 in which the authority has held that he has no jurisdiction to process the refund claimed under Section 27 of the Customs Act, 1962.

In the backdrop of these facts, the present appeal was taken up for hearing.

It is not in dispute that the appellant had filed the writ petition only as against the denial of a part of the amount claimed by them namely, Rs.1,26,42,928/- and so far as the sanction of the refund of Rs.49,22,139/-, the appellant had no grievance. Furthermore, the department has accepted the said order dated 18th May, 2018 sanctioning refund of Rs.49,22,139/- as there is no appeal as against the said order.

Under such circumstances, the appellant cannot be pushed to a worse situation in his own case as a consequence of challenging the said order in so far as it denies refund amount of Rs.1,26,42,928/-. Therefore, in our considered view, the respondent department should be directed to comply with the order dated 18th May, 2018 by which a sum of Rs.49,22,139/- was sanctioned as refund and with regard to the balance amount, since already an order in original dated 4th August, 22 has been passed by the Assistant Commissioner of Customs, Air Cargo Refund Section, liberty should be granted to the appellant to challenge the order in the manner known to law.

In the result, the appeal is disposed of by directing the authorities to comply with the order dated 18th May, 2018, whereby the authority sanctioned refund of Rs.49,22,139/-. The appellant is granted liberty to challenge the order passed by the Assistant Commissioner of Customs, Air Cargo Refund Section, dated 4th August, 2022 in the manner known to law before the appropriate forum and it will be open to the appellant to canvass all questions of fact and law before the said forum.

The application being GA 2 of 2022 stands closed.

(T.S. SIVAGNANAM, J.)

(PRASENJIT BISWAS, J.)

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