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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/193/2022
IA NO. GA/1/2022
COMMISSIONER OF CUSTOMS PORT
Vs
ESS ENN IMPEX AND ORS.

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : NOVEMBER 03, 2022.

Appearance:
Mr. S. K. Mahato, Adv.
...for appellant
Mr. K . K. Maiti, Adv.
...for respondent

The Court :- This intra-Court appeal filed by the revenue is directed against the order dated 20th September, 2022 in WPO/2622/2022. The respondent filed the said writ petition praying for issuance of Writ of Mandamus to direct the appellant to release the goods which were imported *vide* bill of entry dated 11th November, 2021 and 24th November, 2021 and issue Waiver Certificate under Regulation 10(1) of the Handling of Cargo in Customs Area Regulation 2016 and Regulation 10(1) of Ship Cargo Manifest and Transhipment Regulation, 2018. The learned Single Bench by the impugned order has disposed of the writ petition directing the appellant to release consignment within a timeframe subject to compliance of the terms and conditions as contained in the letter of the Assistant Commissioner of Customs, Appraising Group VI, Custom House, Kolkata dated 22nd June, 2022. Aggrieved by such direction, the revenue is before us by way of this appeal.

We have heard Mr. K.K. Maiti, learned standing Counsel appearing for the appellant and Mr. Sudhir Mehta, learned Counsel for the respondent/writ petitioner.

The consignment which was imported by the respondent was detained and subject matter of adjudication on two aspects namely, whether the classification of the goods as done by the respondent/writ petitioner was correct and as to the applicability of the Toys (Quality Control) Order, 2020. The case was adjudicated and by order in original dated 31st January, 2022 the adjudicating authority directed absolute confiscation of the goods on the ground that not only the classification of the goods were incorrect but it is a prohibited item in terms of the Toys (Quality Control) Order but granted liberty to the respondent/writ petitioner to re-export the goods.

Aggrieved by such order, the respondent preferred appeal before the Commissioner of Customs (Appeals), Kolkata, who by order dated 29th April, 2022 allowed the appeal filed by the respondent and set aside the order of absolute confiscation as passed by the adjudicating authority and directed release of goods. Aggrieved by the same, the revenue has preferred appeal before the Tribunal which is pending. Since the goods were not released in spite of the order passed by the Commissioner of Customs (Appeals), representation was made by the respondent to the authority by their letter dated 7th May, 2022. Considering the said representation, the Assistant Commissioner of Customs, Appraising Group VI, Kolkata by communication dated 22nd June, 2022 permitted release of the goods subject to certain conditions. The said communication reads as follows :-

"To,
Ess Enn Impex,
C-17, Wazirpur Industrial Area,
Delhi-110052

Sir/Madam,

Sub: Release of balanced goods covered under BE No. 6393662 dt. 24.11.2022 – regarding

Please refer to your letter dated 07.05.22 on the above subject.

In this regard this is to inform you that goods declared as Party Decoration foil items(Foil Balloons) mentioned at Sl No. 04 of the BE no. 6393662 dated 24.11.2021 was confiscated absolutely on account of non-submission of mandatory BIS certification. Later DPIIT, New Delhi vide letter dated 24.02.2022 clarified that Party decoration items does not come under purview of BIS certification. Though, this item is not a restricted item, but it is rightly classifiable under CTH 95030090.

Since, O-in-A No. KOL/CUS(PORT)/AKR/220/2022 dtd 29.04.2022 has not been reviewed yet by the Committee of the Commissioners, so to minimize rent charges, for the time being, you are requested to pay the differential duty and get the goods cleared. Finalisation will be done as per final outcome of the case."

The learned Single Bench has directed release of the goods in terms of the above said communication. The contention of the appellant/revenue is that when the appeal is pending before the Tribunal, an order directing release of the goods could not have been granted by the learned Writ Court, more particularly, when there is a classification dispute.

We agree with the submissions of Mr. Maiti under normal circumstances but however, the facts of the case on hand permit us to take a different view. The Commissioner of Appeals allowed the appeal filed by the respondent by referring to clarification issued by the Ministry of Commerce and Industry, Department for Promotion of Industry and Internal Trade, Government of India dated 24th February, 2022. The clarification was sought for by the respondent with regard to merit of inflatable party items/party decoration foil items. The clarification sought for was whether the said items would fall within the scope of the Toys Quality Control Order, 2020. By clarification dated 24th February, 2022 the said authority had stated that the holiday decorations that are primarily intended for ornamental purpose or Christmas decoration are not included in the scope of the Toys (Quality Control) Order. Further, it was informed that the product imported by the respondent/writ petitioner under HSN Code 39269099/95059090 are not covered under the Toys (Quality Control) Order, 2020. Thus, the writ petitioner's contention is that one of the two issues which was adjudicated against the respondent has been finally concluded by the said communication issued by the competent authority of the Ministry of Commerce and Industries.

With regard to the second issue namely, regarding the classification, the respondent/writ petitioner would contend that the appeal is pending before the Tribunal at the instance of the revenue and in the meantime the respondent/writ petitioner is willing to comply with the direction issued by the Assistant Commissioner of Customs, Appraising Group VI and they are agreeable to pay the differential duty.

Considering the peculiar facts and circumstances of the case, we find the order and direction issued by the learned Single Bench was perfectly justified. In fact, the Assistant Commissioner of Customs, Appraising Group VI rightly understood the scope of the proceedings and took note of the clarification issued by the Ministry of Commerce and Industry dated 24th February, 2022 and balancing the interest of revenue has sent the communication dated 22nd June, 2022. Therefore, if the respondent/writ petitioner is directed to comply with the conditions contained in the said communication, the interest of revenue will be sufficiently safeguarded and they will be at liberty to canvass all grounds before the Tribunal in the pending appeal.

For the above reasons, the appeal is dismissed and the order and direction issued by the learned Single Bench is confirmed.

There will be a direction to the appellant to release the pending consignments after issuance of a waiver certificate under Regulation 10(1) of the Handling of Cargo in Customs Area Regulation 2016 and Regulation 10(1) of Ship Cargo Manifest and Transhipment Regulation, 2018 from the date of detention of the goods till the date of release.

It is made clear that the respondent/writ petitioner shall comply with the conditions imposed by the Assistant Commissioner of Customs, Appraising Group VI in his communication dated 22nd June, 2022.

This order and direction shall, in no manner, prejudice the rights of the appellant/revenue in canvassing all grounds before the Tribunal in the pending appeal.

The above direction be complied with by the appellant within a period of 10(ten) days from the date of receipt of the server copy of this order subject to compliance with the conditions.

Consequently, the application being GA/1/2022 also stands dismissed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

Pkd/GH/SN/Spal.