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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/209/2022
IA No.GA/1/2022
COMMISSIONER OF CUSTOMS (PORT) KOLKATA
VS.
SUNEET KUMAR JAIN AND ORS.

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

<u>*Appearance*</u> :
Mr. K. K. Maiti, Adv.
...for the appellant.

Mr. Sudhir Mehta, Adv.
Mr. Anurag Bagaria, Adv.
...for the respondents.

The Court : This intra-court appeal is directed against the order dated 23rd September, 2022 in WPO No. 2623 of 2022. Identical direction was issued by the learned Single Bench in WPO No.2623 of 2022 dated 23rd September, 2022. The revenue had filed an appeal against the said order in APOT 193 of 2022 which was disposed of by order dated 3rd November, 2022. The operative portion of the order reads as follows:

> *"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."

Considering the facts and circumstances of the case, we find no distinguishing features for us to take a different view.

Mr. K.K. Maiti, learned standing counsel appearing for the appellant submitted that in the said case the importer was ESS ENN IMPEX and in this appeal the respondent/writ petitioner is one Mr. Suneet Kumar Jain.

Mr. Sudhir Mehta, learned advocate appearing for the respondent/writ petitioner submitted that the respondent herein is the proprietor of M/s. ESS ENN IMPEX which was the writ petitioner in WPO 2623 of 2022. In any event, we find that the interest of the revenue has been sufficiently safeguarded as the core issue regarding the classification dispute is now pending before the Tribunal and the Tribunal will adjudicate on the same and render a decision.

In the light of the above, the appeal is dismissed and the orders passed 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.

Since we have not dealt with the classification dispute which is pending before the learned Tribunal, it goes without saying that the learned Tribunal will take a decision on facts and on law and not to be in any manner influenced by the observations made in this judgment and order.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

Pkd/S.Pal