

14.12.2023
PB
Sl. No.24.

WPA 116 of 2022

Kefco Exim Pvt. Ltd. & Anr.
Vs
The Additional Commissioner of
Customs, CC(P), Kolkata & Ors.

Mr. Vinay Shraff,
Ms. P. S. Paul,
Ms. Sanchita Dey,
Ms. S. Poddar.

... For the Petitioners.

Mr. U. S. Bhattacharya,
Ms. Banani Bhattacharya.

.....for the respondent.

Heard learned advocates appearing for the parties.

This writ petition was filed by the petitioner making prayer for direction upon the respondent customs authority concerned to pay to the petitioner value of goods in question as on the date of seizure which was seized on the ground of foreign origin and that it was smuggled nature of the goods as held by the order of the adjudicating authority dated 29th September, 2020, which was set aside by the Commissioner of Customs (Appeals) by the order dated 1st March, 2021 by specifically holding in concluding paragraphs 32 to 35 which is quoted hereunder:-

“32 In light of the discussions made hereinbefore, I hold that in the absence of any evidence to first establish the foreign origin of the goods and secondly the smuggled nature of the impugned goods by the lower authorities, there is no justifiable reason to confiscate the impugned goods in question in terms of Section 111(b) & (d) of the Customs Act, 62 and thus, the question no.20(a) & (b) above is accordingly answered.

33. Further, the question of imposition of penalty in terms of Section 112(a) & (b) of the Customs Act, 62 only does arise when the confiscation vide the impugned order is upheld. In the present case, of the facts and circumstances, there is no iota of evidence to show the goods are of foreign origin and have been illegally imported into the country in concern of the appellant herein thereby rendering himself liable to be penalized. Since, confiscation of the goods seized held in the impugned order is set aside, penalty in lieu thereof is not liable to be imposed in terms of Section 112(a) & (b) of the Customs Act, 62.

34. In view of the above judicial pronouncements, the impugned order which is passed on presumption and assumption is unsustainable and liable to be set aside.

35. Accordingly the appeal is allowed with consequential relief in favour of the appellant.”

Petitioner submits that in view of the aforesaid order of the appellate authority that the respondent customs authority could not make out any case in their favour justifying the reason to confiscate the impugned goods in question and the imposition of penalty and particularly in paragraph 33 of the said order of the appellate authority, it has been specifically recorded that there was no iota of evidence to show that the impugned goods were of foreign origin and were illegally imported in the country which were the ground for confiscation and the appellate authority had set aside the impugned order of adjudication.

Mr. Bhattacharya, learned advocate for the respondent customs authority could not produce any order or document to show that the aforesaid order of the appellate authority was further challenged before any higher forum by the customs authority and that the aforesaid order of the appellate authority setting aside the impugned adjudication order of confiscation and penalty was either set aside or reversed. He submits that in spite of the adjudication order being set aside by the appellate authority by declaring the confiscation and order of penalty not sustainable in law customs authority is not bound by the said order

to return goods in question or to pay its value since it is hazardous in nature and not fit for human consumption which was neither the case by the department in adjudication order nor before the appellate authority nor the department has further challenged the aforesaid order of the appellate authority before any higher forum. He further submits that since goods were hazardous for human consumption it has been destroyed. He further submits that the customs authority is not also bound to pay the petitioner the value of goods in spite of accepting the order of the appellate authority setting aside the adjudication order of the appellate authority. Such contention of Mr. Bhattacharya on the face of it is not sustainable and this stand of the department is highly unreasonable and arbitrary and anarchism by the sub-ordinate authority in defying the order of the appellate authority in spite of accepting the order of appellate authority and not filing the appeal against the same and in refusal to give all consequential relief to the petitioner pursuant to the order of the appellate authority.

Considering the facts and circumstances of the case and submission of the parties and in view of the order of the appellate authority dated 1st March, 2021 holding that the adjudication order confiscating the

goods in question and imposition of penalty not sustainable in law, action of respondents customs authority neither returning the seized goods in question to the petitioner nor paying the value of goods as on the date of the seizure is arbitrary and illegal and accordingly the respondent customs authority concerned is directed to pay to the petitioner the value of goods in question as on the date of seizure within a period of four weeks from the date of communication of this order. However, I am not inclined to grant any interest to the petitioner in the facts and circumstances of the case.

Accordingly, this writ petition being WPA 116 of 2022 is disposed of.

(Md. Nizamuddin, J.)