Item No.6.

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

HEARD ON: 17.02.2023

DELIVERED ON: 17.02.2023

CORAM:

THE HON'BLE MR. JUSTICE T. S. SIVAGNANAM

AND

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

MAT 2025 of 2022
With
I.A. No.CAN 1 of 2022

M/s. Emergy Marketing Private Limited.
Vs.
The Principal Commissioner of Customs (Port) & ors.

Appearance:-

Mr. Arnab Chakraborty,
Mr. Aniket Chaudhury .... for the appellant.

Mr. Kaushik Dey,
Mr. Tapan Bhanja ...... for the respondents.

JUDGMENT

(Judgment of the Court was delivered by* T.S. SIVAGNANAM*, J.)

1. This intra Court appeal by the writ petitioner is directed against the order dated 8th December, 2022 passed in W.P.A. No.26160 of 2022. The writ petition was dismissed on the ground that it has been filed challenging a show cause notice and that the appellant should face the adjudication proceedings initiated by the Assistant Commissioner of Customs Appraising Refund Section (Port) Customs House, Kolkata pursuant to the show cause notice dated 12th October, 2022. Though at the first blush, it may appear that the writ petition was filed against a show cause notice but on a closer scrutiny of the facts, we find that the impugned show cause notice itself is without jurisdiction. This conclusion of us has been arrived at by taking note of the fact inasmuch as the appellant has succeeded before the first appellate authority in the adjudication proceeding and against such an order, the revenue has preferred appeal before the Tribunal.

2. In the meantime, the appellant sought for refund of the pre-deposited amount, which had been refunded to the appellant by taking note of the relevant circulars issued by the Central Board. In such circumstances, it will not be open to the Assistant Commissioner of Customs to initiate fresh proceedings

that too under Section 28(1) of the Customs Act, 1962 and call upon the appellant to explain as to why the refunded amount should not be recovered.

3. If the impugned show cause notice is allowed to be proceeded further, it would tantamount to allowing the appeal filed by the revenue, which is now pending before the Tribunal. It is submitted by Mr. Koushik Dey, learned senior standing counsel appearing for the revenue that the revenue has also moved for an order of stay before the Learned Tribunal. Even assuming that the learned Tribunal had passed any interim order, that would not empower the department to initiate recovery proceedings for the amount of refund already sanctioned and paid to the appellant.

4. This also would indirectly mean that the department would be succeeding in their appeal before the Tribunal by virtue of an interim order, if any, granted, which is impermissible in law.

5. Therefore, we hold that the show cause notice dated 12th October, 2022 is without jurisdiction at this given point of

time. In the result, the appeal is allowed and the show cause notice dated 12th October, 2022 is quashed.

6. We make it clear that this order will not stand in the way of the department to initiate appropriate action in accordance with law subject to the outcome of the appeal filed by the department, which is now pending before the learned Tribunal.

7. There shall be no order as to costs.

8. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM, J)

I agree,

(HIRANMAY BHATTACHARYYA, J.)

NAREN/PALLAB(AR.C)