OD-9

CUSTA/1/2023
IA No.GA/1/2023

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION
ORIGINAL SIDE

COMMISSIONER OF CUSTOMS (PORT),
KOLKATA

-Versus-

M./S. NAMDEV EXPORTS

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 17th February, 2023

Appearance :
Mr. K.K. Maiti, Adv.
Mr. Abhradip Maity, Adv.
...for the appellant.

The Court : This appeal filed by the revenue under Section 130 of the Customs Act, 1962 (the 'Act' for brevity) is directed against the order dated 5th August, 2022 passed by the Customs, Excise and Service Tax Appellate Tribunal, Eastern Zonal Bench, Kolkata (the Tribunal) in Customs Appeal No.78534 of 2018.

The revenue has raised the following substantial questions of law for consideration :

(i) Whether the Learned Tribunal has committed gross error of law by not appreciating that the goods imported by the respondent has not

at all been received in their declared factory premises and diverted to local market in Delhi. Further, imported goods have not at all been used in the manufacturing of export goods and as such the respondent has flouted the condition of the Notification No.21/2002-Cus dated 01.03.2002?

(ii) Whether the Learned Tribunal's observation is correct when the imported goods have not been received in the original/declared factory premises and receipt of the goods in the new factory premises after obtaining registration subsequent to the Bill of Entry can be considered as correct receipt by the respondent?

(iii) Whether the respondent is liable to pay the customs duty for violation of condition of Notification No.21/2002-Cus dated 01.03.2002?

.

We have heard Mr. K.K. Maiti, learned standing counsel assisted by Mr. Abhradip Maity, learned Advocate appearing for the appellant.

Before we consider the substantial questions of law which have been suggested by the revenue, what strikes our eyes is the first issue dealt with by the learned Tribunal. The issue being whether there was an inordinate delay in completion of the proceedings by the department and passing the impugned order. The finding recorded by the learned Tribunal on this issue as follows :

"12. In regards the first issue, it is found that show-cause notice was issued on 09th November, 2004 and the reply was submitted on 21st Mach, 2005. Five personal hearings were conducted on 01st June, 2005, 17th October, 2006, 03rd December, 2014, 11th October, 2017 and 09th May, 2018. The impugned order was issued on 29th June, 2018. The total proceeding as contended on behalf of the Appellant, indeed, took 14 long years to reach finality. The Appellant reminded the respondent on 05th May, 2015 that written arguments had been submitted, the Appellant had been heard and that an order was awaited and requested. The respondent has acknowledged in paragraph 50 of the impugned order that there were multiple hearings, but there is no explanation for the delay of 14 years. There is nothing on record to attribute the delay to the Appellant, no defence or explanation has been given to this Tribunal for the delay by the Department.

13. Inordinate delay in taking the proceedings relating to a show-cause notice to its final conclusion has been held by the Bombay High Court in ***The Bombay Dyeing & Manufacturing Co. Ltd. v. D.C., C.G.S.T. & C.X., Mum., 2022 (2) TMI 783*** *at paragraph 9 to be violative of natural justice. Further, the Gujarat High Court in* ***Sunrise Remedies Pvt. Ltd. v. U.o.I., (2019) 366 E.L.T. 994 (Guj.)*** *has remarked at paragraph 6 that proceedings cannot be a hanging sword on an assessee without justifiable cause. If proceedings do not culminate within a reasonable period of time then they stand vitiated. Following these decisions, the answer to issue I should conclusively answer issue V and suffice for the* *admission of this appeal. The delay of over a decade here, especially when genuine efforts have been made by the Appellant to participate in them, truly violates the Appellant's right to natural justice and vitiates the entire proceeding. However, for the sake of completeness, the matter cannot, of course, be left there."*

From the above finding rendered by the Tribunal, it is seen that there was a delay of 14 years in concluding the proceedings. Though the show cause notice was issued on 9th November, 2004 and reply was submitted by the respondent on 21st March, 2005 and the respondent was heard in person, the final order of adjudication was passed on 29th June, 2018. The learned Tribunal noted that there is nothing on record to indicate that the respondent attributed to the delay in completion of the proceedings whereas in the order of adjudication it has been noted that there were multiple personal hearings conducted in the matter but there was no explanation for the delay of 14 years. In any event, a matter cannot be kept indefinitely pending as it will virtually be a Damocles sword hanging on the head of the assessee.

Thus, we are satisfied that the learned Tribunal was fully justified in coming to the conclusion that in the absence of any explanation for the inordinate delay of 14 years, the rights of the respondent have been affected and it would be in violation of the principles of natural justice. This is sufficient for us to uphold the order passed by the learned Tribunal. Consequently, the other issues which have been raised by the revenue and suggested as substantial questions of law need not be gone into.

In the result, the appeal (CUSTA/1/2023) is dismissed on the ground that there is no substantial question of law arises for consideration.

Consequently, the connected application for stay (IA No.GA/1/2023) also stands closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

A/s./S.pal