O-22 & 23

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION
ORIGINAL SIDE

CUSTA/14/2022
IA No.GA/2/2022

COMMISSIONER OF CUSTOMS (PORT), KOLKATA

-Versus-

SHRI MAHENDRA KUMAR SUTAR, PROPRIETOR M/S. R.C. METAL INDUSTRIES

CUSTA/13/2022
IA No.GA/1/2022
GA/2/2022

COMMISSIONER OF CUSTOMS (PORT), KOLKATA

-Versus-

MONARCH INTERNATIONAL, PROPRIETOR ASHOK SAWHNY

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 14th March, 2023

Appearance :
Mr. Bhaskar Prasad Banerjee, Adv.
Mr. Tapan Bhanja, Adv.
...for the appellant/Customs Authority.

Mr. Arijit Chakraborti, Adv.
Mr. Prabir Bera, Adv.
Mr. Deepak Sharma, Adv.
...for the respondent.

The Court : These appeals have been filed by the revenue under Section 130 of the Customs Act, 1962 (the 'Act') challenging the correctness of the final order passed by the

Customs, Excise and Service Tax Appellate Tribunal, Kolkata, Regional Bench dated 9th November, 2021.

The revenue has raised various substantial questions of law for consideration.

We have heard Mr. Bhaskar Prasad Banerjee, learned standing Counsel assisted by Mr. Tapan Bhanja, learned Advocate for the appellant/revenue and Mr. Arijit Chakraborti, learned counsel assisted by Mr. Prabir Bera and Mr. Deepak Sharma, advocates for the respondent.

After hearing the learned Advocates for a considerable length of time, we find that these appeals are not maintainable before this Court as the core issue is with regard to classification of the product which was to be exported by the respondent. The proposal in the show cause notice dated 17th November, 2014 is by alleging that the material Chrome Concentrate classifiable under Customs Tariff Heading 2610 appears to have been willfully mis-declared as "Indian Origin Nozzle Filling Compound" classified under Customs Tariff Heading 6903. The adjudicating authority who adjudicated the show cause notice and passed order in original dated 28th December, 2017 confirmed the proposal in the show cause notice and holding that the correct classification of the goods is under Customs Tariff Heading 2610.

This order passed by the adjudicating authority has been reversed by the Tribunal. As pointed out earlier, in these appeals the substantial questions of law which have been suggested by the revenue all revolve upon the classification of the subject goods. This being an undisputed position, these appeals are held to be not maintainable before this Court. Hence, these appeals (CUSTA/14/2022 and CUSTA/13/2022) stand disposed of on the ground that they are not maintainable with liberty to the appellant/Department to prefer appeal before the Hon'ble Supreme Court, if so advised.

The Registry is directed to return the original certified copy of the impugned order passed by the Tribunal to the learned standing counsel appearing for the appellant after retaining a photostat copy.

Consequently, the connected applications also stand disposed of.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

As./K.Banerjee