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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT 279 of 2015
IA NO:GA/1/2015(Old No:GA/2183/2015)
SRIKANT BAGLA
VS.
THE COMMISSIONER OF CUSTOMS, PORT & ORS.

BEFORE :

THE HON'BLE ACTING CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 8th May, 2023

<u>Appearance</u> :
Mr. Abhratosh Majumder, Sr. Adv.
Mr. Nilotpal Chatterjee, Adv.
…for the petitioner

Mr. Uday Sankar Bhattacharya, Adv.
Ms. Manasi Mukherjee, Adv.
…for the respondent nos.1-3

Mr. Somnath Bose, Adv.
…for Port Trust

The Court : We have heard learned Counsel for the parties.

There is a delay of 14 days in preferring the instant appeal. We are satisfied with the reasons given in the affidavit filed in support of the petition for condonation of delay. Accordingly, the application for condonation of delay being GA/1/2015 (Old No:GA/2183/2015) is allowed. Delay is condoned.

This intra court appeal by the writ petitioner is directed against the order passed by the Learned Single Bench in WP 818 of 2014, dated 20th April, 2015.

By the said order the Learned Single Bench had disposed of the writ petition with certain observations. The appellant had filed the writ petition challenging an order of adjudication passed by the Commissioner of Customs (Port) dated 17th July, 2024 by which the goods which were imported by the appellant from three countries were directed to be re-exported on the ground that it did not meet the required standards as per the Hazardous Waste Management Rules, 2008. Apart from that the adjudicating authority also imposed penalty. The appellant also impugned the report of the Central Revenue Control Laboratory which had decided the sample for the second time after the initial test. The petitioner also prayed for waiver of the demurrage and detention charges which were imposed on the containers which were detained and seized by contending that the delay is attributable to the department and therefore the appellant should not be burdened with such charges.

The facts which are necessary to note are that the appellant had imported goods described as furnace oil through six containers from three countries, Singapore, Malayasia and Australia. The containers were detained, samples were drawn and as per the first report the goods were held to be not furnace oil on account of the mineral composition of the said goods. Subsequently the second test report was called which appears to have confirmed the first test report which was also impugned in the writ petition. In any event, the prayers sought for in the writ petition could not have been granted for more than one reason, firstly, as against an order of adjudication the appellant has an alternate remedy of an appeal before the CESTAT. Such remedy is not only effective but efficacious because the Tribunal, being the last fact-finding authority in the hierarchy of authorities, can re-examine the entire matter which was available with the adjudicating authority and thereafter take a decision in the matter. Since the matters will involve disputed questions of fact, the same cannot be resolved in a writ proceeding by way of affidavits. Therefore, the appellant has to necessarily approach the Tribunal for appropriate orders. The apprehension expressed by the learned senior Advocate for the appellant is that the order of adjudication was passed in the year 2014 and by this time, the period of limitation for filing an appeal having been over the appellant would be precluded from approaching this appeal. The appellant need not have any apprehension in this regard since this Court is of the view that the time spent before this Court when the writ petition was pending as well as the period during which this appeal was pending can be excluded while directing the appellant to avail the alternate remedy.

With regard to the prayer for waiver of demurrages and detention charges, the same can also be agitated before the Tribunal and the Tribunal will take a decision on such issue as well. Therefore, we are of the view that the appellant should not be permitted to bypass the appellate remedy on account of the complicated and disputed factual position.

The learned senior Advocate appearing for the appellant submitted that the order passed by the adjudicating authority directing re-export of the goods is not feasible of compliance at this juncture since the goods were imported during 2011-13 and by efflux of time it has been reduced into a waste and could also be termed to be a toxic waste. This plea can very well be placed by the appellant before the Tribunal and if the same is raised, the Tribunal will consider the same on merits and in accordance with law.

In the result, the appeal is disposed of by directing the appellant to file appeal as against the order of adjudication passed by the Commissioner of Income Tax (Exemption) before the Customs, Excise Service Tax Appellate Tribunal, East Zonal Bench, Kolkata and if such appeal is filed within a period of six days from the date receipt of server copy of this order, the learned Tribunal shall entertain the appeal and decide the matter on merits and not reject the same on the ground of limitation.

In the light of the reasons set out by us in the preceding paragraphs, the appellant would be entitled to raise all factual and legal issues including their plea that the order passed by the adjudicating authority directing re-export is not feasible of compliance at this juncture and also to challenge the test report and the prayer for waiver of demurrages and detention charges.

(T.S. SIVAGNANAM, J.)
ACTING CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

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