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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

RVWO/33/2022
IA No:GA/1/2022, GA/2/2022
PRINCIPAL COMMISSIONER OF CUSTOMS, AIRPORT ADMINISTRATION
VS.
CHEVIOT COMPANY LIMITED & ORS.

BEFORE :

THE HON'BLE ACTING CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE PRASENJIT BISWAS
Date : 13th April, 2023

Appearance :
Mr. Bhaskar Prosad Banerjee, Adv.
Mr. Tapan Bhanja, Adv.
... for applicant Customs authority

The Court : This review application has been filed by the revenue to review the order and direction dated 2nd September, 2022 in APOT 133 of 2022.

There is a delay of 27 days in filing the appeal. The respondent has been served and affidavit of service has been filed. On perusal of the affidavit filed in support of the application for condonation of delay, we find sufficient cause has been shown for not preferring the review application within the period of limitation. Therefore, the application for condonation of delay is allowed and the delay in filing the review application is condoned.

We have heard Mr. Bhaskar Prosad Banerjee, learned standing counsel, assisted by Mr. Tapan Bhanja, learned advocate appearing for the department.

This review application has been filed on the ground that an order passed by the Commissioner of Customs (Appeals), dated 22nd October, 2018 was not placed before this Court when direction was issued. The matter concerns refund of cess collected from the respondent. While disposing of the appeal, following directions/observations were made :-

"In the backdrop of these facts, the present appeal was taken up for hearing.

It is not in dispute that the appellant had filed the writ petition only as against the denial of a part of the amount claimed by them namely, Rs. 1,26,42,928/- and so far as the sanction of the refund of Rs.49,22,139/-, the appellant had no grievance. Furthermore, the department has accepted the said order dated 18th May, 2018 sanctioning refund of Rs.49,22,139/- as there is no appeal as against the said order.

Under such circumstances, the appellant cannot be pushed to a worse situation in his own case as a consequence of challenging the said order in so far as it denies refund amount of Rs.1,26,42,928/-. Therefore, in our considered view, the respondent department should be directed to comply with the order dated 18th May, 2018 by which a sum of Rs.49,22,139/- was sanctioned as refund and with regard to the balance amount, since already an order in original dated 4th August, 22 has been passed by the Assistant Commissioner of Customs, Air Cargo Refund Section, liberty should be granted to the appellant to challenge the order in the manner known to law.

In the result, the appeal is disposed of by directing the authorities to comply with the order dated 18th May, 2018, whereby the authority sanctioned refund of Rs.49,22,139/-. The appellant is granted liberty to challenge the order passed by the Assistant Commissioner of Customs, Air Cargo Refund Section, dated 4th August, 2022 in the manner known to law before the appropriate forum and it will *be open to the appellant to canvass all questions of fact and law before the said forum.*

The application being GA 2 of 2022 stands closed."

On the date when the above order was passed, it was not brought to the notice of this Court that the order dated 18th May, 2019 directing refund of the sum of Rs.49,22,139/- was set aside by the Commissioner (Appeals) and by which the said order was set aside and the matter was remanded back to the original authority to decide the matter afresh, pursuant to which de novo adjudication was done and order-in-original dated 4th August, 2022 has been passed by the Assistant Commissioner of Customs, Air Cargo Refund Section, Kolkata, holding that the claim of Rs.1,75,65,067/- for refund of jute cess is beyond the jurisdiction of the department and cannot be processed under Section 27 and of Customs Act. Therefore, the claim made by the respondent was rejected on the said ground.

It is submitted by the learned counsel for the review applicant that challenging the said order dated 4th August, 2022 respondent has filed a writ petition being WPA 22717 of 2022. In the light of the same, the above direction issued by this Court directing the authorities to comply with the order dated 18th May, 2018 and sanctioning refund of Rs.49,22,139/- cannot be given effect to since the said order has been set aside and the matter was remanded to the original authority for de novo consideration and the original authority has passed fresh orders rejecting the claim by order dated 4th August, 2022 which has been challenged by the respondent by filing a writ petition.

Therefore, the above direction stands modified leaving it open to the respondent to work out its remedies after the writ petition is disposed of.

With the above direction, the review application stands allowed to the extent indicated.

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

(PRASENJIT BISWAS, J.)

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AR(CR)