30.01.2024
Item No.17
RP
Ct. No.1

MAT 2085 of 2023
+
IA No.CAN 1 of 2024

Commissioner of Customs (Prev.), W.B.
Vs.
Allied ICD Services Limited & Ors.

Mr. Uday Shankar Bhattacharya
Mr. Bhaskar Prosad Banerjee
Mr. Tapan Bhanja
Ms. Aishwarya Rajyashree
.....for the Appellant
Mr. J.P. Khaitan, Sr. Adv.
Mr. K. Thakkar
Mr. Souvik Bhadra
Mr. Debangshu Ghatak
Mr. Debasish Das
.....for the Respondents

1. Compilation filed by the appellant/Department is kept on record.
2. This intra-Court appeal is preferred by the Department challenging the order passed by the learned Single Bench dated 28.07.2023 by which an order of status quo was granted with regard to the notice dated 13th July, 2023. The learned writ Court had passed an interim direction on 3.1.2023 wherein the issues, which are involved in the writ petition, were crystallized as three in number, namely, (i) impugned cost recovery charges; (ii) renewal of customs licence; and (iii) interest on impugned cost recovery charges. So far as the issue

relating to the cost recovery charges the learned Single Bench directed the Adjudicating Authority to adjudicate the said issue. This direction has been complied with and an order has been passed on 28th February, 2023 which is now the subject matter of challenge in the writ proceeding by filing an application. In the adjudication order dated 28th February, 2023 the authority confirming the demand of Rs.2,68,,73,838/-, which is the amount payable as cost recovery charge, directed the amount which has already been paid by the writ petitioner to be appropriated to the Government Exchequer. With regard to the interest payable on late payment of cost recovery charges, the Adjudicating Authority has observed that since the matter is subjudice before the learned writ Court no order is being passed. Equally with regard to issue relating to extension of custodianship licence the authority has refrained from passing any order since the matter is subjudice. The learned senior advocate appearing for the respondent/writ petitioner places reliance on the decision of the Hon'ble Supreme Court passed in the case of ***Diamond & Gem Dev. Corporation*** vs. ***Union of India*** reported in ***2016 (342) E.L.T. 366 (Guj.)*** and submitted that levy of statutory interest on delayed payment of charges is not proper and not sustainable. In any event, the amount payable upto the period 31st January, 2023 has been appropriated by the appellant/Department pursuant to the order of adjudication dated 28th February, 2023. We are informed that pleadings are completed and the writ petition is ready for hearing.

3. It is submitted by the learned senior advocate for the respondent/writ petition that no affidavit has been filed to CAN 6 of 2023 as also to the supplementary affidavit filed in CAN 5 of 2022.

4. Mr. Uday Shankar Bhattacharya, learned senior standing counsel appearing for the appellant raised a question with regard to maintainability of the said application wherein correctness of the adjudication order dated 28th February, 2023 has been challenged. In our view, the issue regarding maintainability has to be held in favour of the respondent/writ petitioner since the adjudication process was done by the authority pursuant to the interim direction issued by the learned writ Court. Therefore, there can be no embargo for the learned writ Court to test the correctness of an order which was passed during the pendency of the writ petition, more so, pursuant to the direction issued by the writ Court. Therefore, the objection regarding maintainability of CAN 6 of 2023 or the supplementary affidavit filed in CAN 5 of 2022 as

raised by the department is decided in favour of the respondent/writ petitioner. It is open to the appellant/department to file affidavit to the supplementary affidavit filed in CAN 5 of 2022 and CAN 6 of 2023, if so they are advised, within two weeks from receipt of the server copy of this order.

5. As noted above, the cost recovery charges upto the period 31st January, 2023 has already been recovered, the cost recovery charges for the remaining period, namely from February 2023 till the writ petition is heard and disposed of, the interest of the revenue has to be protected. Therefore, we direct the appellant/department to serve a demand on the respondent/writ petitioner for the cost recovery charges payable for the period from February 2023 till February 2024 and as soon as the demand is raised the respondent/writ petitioner shall deposit 50% of the said demand before the appropriate authority and furnish a bond for the remaining amount of the demand within 30 days from the date of service of demand on the respondent/writ petitioner. It is made clear that the amount shall be treated as deposit and shall abide by the result of the writ petition. The learned writ Court is at liberty to hear the writ petition as expeditiously as possible subject to convenience of the Hon'ble Court.

6. With the above direction, the appeal and the connected application are disposed of.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(SUPRATIM BHATTACHARYA, J.)