OD-16

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION
ORIGINAL SIDE

CUSTA/16/2024
IA NO:GA/1/2024

COMMISSIONER OF CUSTOMS (PORT), KOLKATA
VS
M/S. P.D. ASSOCIATES

BEFORE :

THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 9th July, 2024

Appearance :
Mr. Kaushik Dey, Adv.
Mr. Tapan Bhanja, Adv.
…for appellant
Ms. Alisha Das, Adv.
Ms. Elina Dey, Adv.
…for respondent

The Court : This appeal by the revenue is directed against the order passed by the Customs, Excise and Service Tax Appellate Tribunal, East Zonal Bench, Kolkata, in Customs Appeal No.276 of 2011, dated 1st August, 2023.

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

i) Whether the Learned Tribunal failed to appreciate that when the respondent admittedly failed to fulfil the conditions of Notification

No.27/2002 Cus dated 01.03.2002 the imposition of redemption fine, interest and penalty upon the respondent by the adjudicating authority is correct and in accordance with law?

ii) When the respondent admitting his fault has voluntarily paid the interest as per condition No.5(c) of the Notification dated 01.03.2002 whether the Learned Tribunal is justified in observing that the respondent is not required to pay the interest and would be eligible for consequential refund along with interest as per the statutory provisions?

iii) Whether the observation of the Learned Tribunal that the amounts paid by the appellant (the respondent herein) under the heading of interest and penalty would be eligible for consequential refund to him along with interest as per the statutory provisions, is contrary to the provision of section 27 and 27A of the Customs Act, 1962?

We have heard Mr. Kaushik Dey, learned Counsel appearing for the appellant and Ms. Alisha Das, learned Counsel for the respondent.

The respondent was engaged in the project of raising and strengthening of Brahmaputra Duct for which they imported sand and water pump machinery and accessories on lease during the period April, 2009 to September, 2009. Respondent claimed benefit of Notification No.27/2008-CUS, dated 1st March, 2008, by which if the goods were re-exported between three to six months from the date of import, the customs duty is required to be paid at 15% of the tariff rate. The Notification stated that the importer is required to execute bond with a bank guarantee undertaking to re-export the goods. The Customs department allowed the clearance of goods provisionally against payment of 15% of the total duty along with re-exported bond executed by the appellant and collected a security proceeds of Rs.73,65,624/-. This amount is nothing but the duty which was payable but for claiming the benefit of Notification No.27/2008-Cus, dated 1st March, 2008. This demand and acceptance of the so called security deposit was wholly unauthorized and beyond jurisdiction and not provided for in the notification. This aspect has been rightly noted by the learned Tribunal and also right in making the observation that the importer had to make arrangement for the full duty amount at the time of the import, which nullifies the benefit which the importer was entitled to under the said notification.

The undisputed fact is that the respondent could not complete the work for which they had imported equipments. Some of the equipments were lost and some damaged. Therefore, they agreed that the amount of cash deposit which was collected and termed to be a security deposit namely, the sum of Rs.73,65,624/-, may be protected and they did not contest the payment of customs duty. Added to this, the department insisted upon payment on interest which obviously was not liable to be paid nonetheless the respondent has paid interest of Rs.20,71,220/- on 26th August, 2011. The other aspect, which ought to have made in the mind of the department is whether the assessee in deliberate violation of the conditions of notifications committed by the respondent. The respondent candidly admitted that they could not fulfil the export obligation due to circumstances which were beyond their control. This aspect has not been doubted by the department not shown to be factually incorrect. In such circumstances, the manner in which the respondent has been dealt with by the department right from the inception i.e. from the date of import is wholly unsustainable, unreasonable and arbitrary. Under the notification there was no power of confiscation. Furthermore, the notification does not provide for confiscation of the goods in the event the goods are not exported within the timeframe stipulated under the notification or the extended period thereof. Therefore, the question of confiscation of the goods also would not arise. This is more so, when the entire amount of duty has already been collected by the department and the money was lying with them from the date on which the goods were imported i.e. between April 2009 and September 2009. Considering all these factors the learned Tribunal, in our view, was right in holding that the respondent was not liable for payment of any interest, till the payment of the duty as the entire amount of Rs.73,65,624/- was with the appellant department.

Thus, we find that the reason given by the Tribunal for granting relief to the appellant is fully justified and legally sustainable and does not call for any interference.

Consequently, the appeal fails and dismissed.

The substantial questions of law are answered against the revenue.

The application stands disposed of.

(T.S. SIVAGNANAM, C.J.)

(HIRANMAY BHATTACHARYYA, J.)

Pkd/GH/SN/mg.
AR(CR)