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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APO/12/2024
IA NO: GA/1/2024
COMMISSIONER OF CUSTOMS
PREVENTIVE
VS
M/S AKRITI GUPTA JEWELLERS PVT LTD AND ORS.

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE JUSTICE SUPRATIM BHATTACHARYA
DATE : 7TH February, 2024.

Appearance :
Mr. Vipul Kundalia, Adv.
Mr. Tapan Bhanja, Adv.
..for appellant
Mr. Arijit Chakrabarty, Adv.
Mr. Debadidtya Banerjee, Adv.
Mr. Nilotpal Chowdhury, Adv.
Mr. Prabir Bera, Adv.
Mr. Syed Wasim Faruque, Adv.
Mr. Deepak Sharma, Adv.
…for respondent.

The Court :- This intra-court appeal by the Commissioner of Customs [Preventive], Kolkata is directed against the order dated 3.1.2024 in WPO/1886/2023. The writ petition was filed by the respondents seeking return of the gold which was seized in the light of the orders passed by the Customs Excise and Service Tax Appellate Tribunal dated 3.11.2023 confirming the order passed by the Commissioner of Customs [Appeals], Kolkata dated 14.8.2020. By the said orders the gold which was seized was held to be not smuggled and that they are not liable for confiscation and no penalty is imposable. Admittedly, as on date no appeal has been preferred by the department against the order passed by the learned Tribunal dated 3.11.2023. It is the submission of the senior standing counsel for the department that the period of limitation for filing the appeal is yet to expire and the department has got sufficient time to file the appeal. Be that as it may, two issues would stand in the way of the appellant department from refusing to comply with the direction issued by the learned Tribunal and returning the gold. The first of which being the instruction given by the Central Board of Indirect Taxes and Customs dated 2.11.2023 by which the monetary limit for filing the appeal before the High Court has been fixed at Rs.1 crore and in paragraph 2 of the instruction there are certain exceptions and admittedly the case on hand does not fall within in one of the three exceptions mentioned in paragraph 2. As could be seen from the order of adjudication the value of the seized gold was determined as Rs.30,50,000/- and personal penalty was imposed on the two appellants being Rs.1,50,000/- and Rs.4,50,000/- respectively. Thus, the sum total of the value as well as the penalty admittedly is far less than Rs.1 crore. Therefore, even assuming that the department seeks to prefer an appeal against the order passed by the learned Tribunal dated 3.11.2023, such an appeal cannot be filed by the revenue in the light of the instruction issued by the Central Board of Indirect Taxes and Customs dated 2.11.2023. The second issue which could stand against the appellant department is in the light of the order in original dated 24.1.2024 passed by the Assistant Commissioner of Customs [Technical], Commissionerate of Customs [Preventive], West Bengal by which the amount of pre-deposit made by the appellant has been returned. It is the submission of the learned senior standing counsel for the appellant/revenue that the pre-deposit amount was returned so that the interest component can be avoided. However, we find from the order in original dated 24.1.2024, the order is not a conditional order stating that the order is passed without prejudice to the rights of the department to challenge the order passed by the Tribunal by filing an appeal before this Court. in other words, the order is unconditional and the amount of pre-deposit as noted by the revenue has been refunded together with interest. Therefore, on these two grounds the appeal is liable to be non-suited. Therefore, we find that there is no error in the direction issued by the learned Writ Court in directing the seized gold to be returned to the appellant. Thus, the appellant/department has not made out any grounds to interfere with the order passed in the writ petition. The appellant/department is directed to comply with the direction within a period of three weeks from the date of receipt of the server copy of this judgment and order.

It is submitted on behalf of the learned standing Counsel for the appellant that the order in original passed by the Assistant Commissioner is in compliance of Section 129EE of the Customs Act, 1962 and cannot be construed to having given up the right of appeal before this Court by the department challenging the order passed by the learned Tribunal.

Be that as it may, in the light of the instruction by the Central Board, the appeal would not be maintainable before this Court against the order passed by the learned Tribunal since admittedly the monetary limit is far less than Rs.1 crore.

Consequently, the appeal stands dismissed.

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(T.S. SIVAGNANAM)
CHIEF JUSTICE

(SUPRATIM BHATTACHARYA,J.)

pkd/GH.