OD-10-13

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION [CUSTOMS]
ORIGINAL SIDE

CUSTA/28/2024
IA NO: GA/1/2024, GA/2/2024
CITIZEN UMBRELLA MANUFACTURERS LTD
VS
THE COMMISSIONER OF CUSTOMS (PORT) KOLKATA
...
CUSTA/29/2024
IA NO: GA/1/2024, GA/2/2024
CITIZEN UMBRELLA MANUFACTURERS LTD
VS
THE COMMISSIONER OF CUSTOMS (PORT) KOLKATA
...
CUSTA/30/2024
IA NO: GA/1/2024, GA/2/2024
CITIZEN UMBRELLA MANUFACTURERS LTD
VS
THE COMMISSIONER OF CUSTOMS (PORT) KOLKATA
...
CUSTA/31/2024
IA NO: GA/1/2024, GA/2/2024
CITIZEN UMBRELLA MANUFACTURERS LTD
VS
THE COMMISSIONER OF CUSTOMS (PORT) KOLKATA
...

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S SIVAGNANAM
-A N D-
HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
DATE : 22nd May, 2024.

*Appearance :*
*Mr. Rachit Lakhmani, Adv.*
*Mr. R. N.Banerjee, Adv.*
*Mr. Piyush Kumar, Adv.*
*...for appellant.*

*Mr. K. K. Maiti, Adv.*
*Mr. Tapan Bhanja, Adv.*
*...for respondent.*

The Court :- All these appeals have been filed by the assessee challenging the common order passed by the Customs, Excise and Service Tax Appellate Authority, Kolkata, Eastern Zonal Bench dated 18.4.2018. All the appeals are time barred, inasmuch as, there is a delay of 1158 days. Under normal circumstances the court will not exercise discretion in such matters where the delay is inordinate and unexplained. Thus, it is required to be seen as to whether the appelants have offered an explanation which is acceptable and whether the delay can be condoned. From the averments set out in the condone delay petition we find that the appellants have not been sleeping over their right but have been deligently prosecuting the matter soon after the order was passed by the tribunal on 18.4.2018. It appears that the appellant was advised to file rectification application before the trib unal which later on the appellants realised were not proper remedy as the grounds raised in the rectification application were, in fact, grounds of appeal. The application was pending before the tribunal till it was dismissed on 22.2.2019. The allegations against the appellants were that for the purpose of obtaining refund of the special additional duty the appellants had produced chartered accountant certificate which appeared to be a fake document since the chartered accountant, who said to have been issued the certificate was dead. The appellants appear to have been advised that first year to prove its case before the criminal forum which led to filing a criminal complaint in the Jorasanko Police Station on 4.4.2019. The Officer-in-Charge of the said Police Station did not take appropriate step on the said complaint which necessitated the appellants to file a complaint before the concerned Magistrate under section 156[3] of the Code of Criminal Procedure. The said complaint was registered as case no.47 of 2019 and by order dated 11.4.2019 further explanation was ordered. Ultimately, the police filed FIR on 15.6.2019 under sections 406, 420, 465, 467, 468, 471 and 120B of the Indian Penal Code, 1860. Subsequently, final report was filed on 9.4.2023 exhonerating the accused persons.

Being aggrieved by the same, the appellants filed naraji petition on 5.12.2023 objectin the final order. The learned Magistrate by an order dated 29.12.2023 allowed the said petition and directed further investigation of the matter. Thus, the criminal proceedings are pending at that stage and thee is a very slow progress. In the meantime, the appellants were advised to file the appeal before the court challenging the order passed by the learned tribunal. The above facts will show that the appellants were deligent in prosecuting the matter, more particularly taking effective steps to bring the wrongdoers within the framework of law. Therefore, we are of the view that the delay though being inordinate has been properly explained.

For the above reason, the applications are allowed and the delay in filing the appeal is condoned.

The learned tribunal by the impugned order had dismissed the appeals filed by the appellants challenging the order passed by the Commissioner of Customs [Appeals] dated 22.9.2017 by which the appellant/assessee confirmed the order passed by the adjudicating authority in Order-in-Original dated 28.10.2016, 30.11.2016, 28.10.2016 and 28.12.2016. The sum and substance of the matter is that the chartered accountant's certificate which was produced by the appellants were found to be fake and, consequently, it was held that the refund of special additional duty was erroneous and order was passed to recover the refund which was sanctioned. Though the adjudicating authority and the appellate authority held the appellants responsible for producing such a false certificate, there is nothing on record to show that the appellants with knowledge and deliberately produced a fake document. In the absence of any material to the said effect, the adjudicating authority as well as the appellate authority should not be recorded such a finding. Thus, rending the finding to be perverse.

The next issue would be as to whether the adjudicating authority will accept a chartered accountant certificate as gospel truth and automatically sanctioned the refund. The answer to this query is obviously, 'no'.

Though the assessee produced a certificate issued by the chartered certificate yet the adjudicating authority is entitled to verify the aspect as to whether the duty has been passed on or not. Even assuming the certificate issued by the chartered accountant is either defective, false or not acceptable for certain reasons nothing prevents the assessee from producing another certificate from the chartered accountant since it is the adjudicating authority, who will consider not only the certificate issued by the chartered accountant but other records which the assessee may be called upon to produce to examine as to whether refund can be sanctioned.

The learned advocate for the appellants submitted that the learned tribunal was consistently of the opinion that in cases where certificates were found to be either false or not acceptable fresh chartered accountant certificate can be considered, if produced by the assessee.

As observed earlier, there is nothing on record to indicate that the appellants with certain ulterior motive and with full knowledge produced a false document stating the same to be true. The learned advocate for the appellants had produced copies of the orders produced by the learned tribunal in Customs Appeal nos. 75364 of 2018 dated 11.3.2024, Customs Appeal no.77136 of 2017 dated 23.11.2023, Customs Appeal no.77038 of 2017 dated 18.10.2023 and Customs appeal no.77140 of 2017 datged 9.10.2023. In all these cases, the learned tribunal has remanded the matter to the adjudicating authority to check the veracity of the fresh chartered accountant certificate and other documents and proceed to take a decision in the matter.

In the light of the above, we are of the view that the matter can be remanded back to the adjudicating authority for a fresh consideration, taking note of the chartered accountant certificate dated 23.11.2016 issued by R. Rampuria & Co., Chartered Accountant called upon the appelants to produce the other documents and records, afford an opportunity of personal hearing to the authorised representative of the appellants and also the veracity of the documents and take a fresh decision on merits and in accordance with law without being in any manner influenced by any of the observations made in the earlier orders, which have been set aside.

The appeals are allowed with the above direction.

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(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

pkd/GH.