ORDER OD – 4

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (CUSTOMS)
ORIGINAL SIDE

CUSTA/11/2020
IA NO: GA/1/2020 (Old No: GA/1200/2020)
COMMISSIONER OF CUSTOMS (PORT), KOLKATA
VERSUS
PRAKASH SHAH, PROPRIETOR OF M/S. MAHAVIR TOOLS CORPORATION

BEFORE :
THE HON'BLE JUSTICE SURYA PRAKASH KESARWANI
AND
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ
Date : 9th February 2024.

Appearance:
Mr. Bhaskar Prosad Banerjee, Advocate
Mr. Abhradip Maity, Advocate
...for the appellant.

Mr. Devansh Sonthalia, Advocate
... for the respondent.

1. Heard Sri Bhaskar Prosad Banerjee, learned senior standing counsel (indirect taxes) for the appellant and Sri Devansh Sonthalia, holding brief of Sri Anurag Bagaria, learned counsel for the respondent.

2. This appeal has been filed praying to set aside the order dated 09.08.2019 in Customs Appeal No.75704 of 2019 passed by the Customs, Excise and Service Tax Appellate Tribunal, Kolkata, Eastern Bench: Kolkata, whereby the respondent's appeal was allowed by the Tribunal. While allowing the appeal, the Tribunal has recorded the following findings in the impugned order:-

"6. We have heard the learned Advocate for the appellant and learned Authorized Representative for the Revenue.

7. From the perusal of the file we find that provisional release order has not given any grounds for enhancing the value and insisting for the bank guarantee of such a huge amount. The issue pertained to import of the various items by the appellant during the aforesaid period. It is the contention of the appellant, which has not been refuted by the learned Authorized Representative regarding that the price declared by the appellant for similar imports, the Custom House is assessing the goods on declared price even now belonging to the other importers. Learned Advocate has also submitted that the consignment has been finally assessed by the assessing officer in terms of the provision of section 17 of Customs Act, 1962 and the consignments have been released. The department has not given any data on the alleged enhancement of declared price to the appellant. The basis for arriving the bank guarantee or for the provisional release of seized have not at all been discussed in the order. In the circumstances we do not find any merit in the impugned order for release of the seized goods. We have also considered the letter dated 19.07.2019, (supra) filed by the learned Departmental Representative. The letter has not cited any evidence of higher contemporaneous import price of the imported goods under question. In absence of contemporary import price of any higher value, the department cannot insist on appellant to give bank guarantee. But to be fair with the appellant as well as with the Revenue, we direct the appellant to furnish bond for the provisional release of the seized goods as per the value indicated by the Commissioner backed by the bank guarantee of Rs.15,00,000/-(Rupees Fifteen Lakhs). The appeal is allowed in above terms."

3. Learned counsel for the appellant could not point out any manifest illegality in the impugned order. We have also perused the impugned order and we find that no substantial question of law is involved.

4. For the reasons afore-stated, the appeal is dismissed at the admission stage.

(SURYA PRAKASH KESARWANI, J.)

(RAJARSHI BHARADWAJ, J.)

S. Kumar