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IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION
ORIGINAL SIDE

CUSTA/35/2024
IA NO:GA/2/2024
PR. COMMISSIONER OF CUSTOMS (AIRPORT & ADMINISTRATION), KOLKATA
VS
M/S. BRINK'S INDIA PVT. LTD.

BEFORE :

THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 10th July, 2024

<u>*Appearance*</u> :
Mr. K.K. Maiti, Adv.
Mr. Tapan Bhanja, Adv.
… for the appellant

Mr. Biswajit Mukherjee, Adv.
Mr. Soumyajit Mishra, Adv.

Mr. S.K. Mohapatra, Adv.
Mr. Sudipta Ghosh, Adv.
Mr. Bikash Kumar Roy, Adv.
…for the respondents

The Court : This appeal by the revenue is directed against the order passed by the Customs, Excise & Service Tax Appellate Tribunal, Eastern Zonal Bench, Kolkata (the Tribunal) in Appeal No. 75659 of 2021, dated 25th

July, 2023. The revenue has suggested the following substantial questions of law for consideration :

> "Whether the Learned Tribunal has committed gross error of law by setting aside the penalty imposed upon the respondent under Section 112 of the Customs Act when it is apparent that the respondent has abated the importer to avail gold without proper payment of duties ?"

We have heard the learned Advocates for the parties.

Admittedly, the respondent was not the importer of the gold but provided service keeping safe custody of the gold imported in the Bin warehouse and transporting the same to the correct destination. The import took place in the year 2014 and show-cause notice was issued to all the noticees and the respondent herein M/s. Brink's India Pvt. Ltd. was also one of the co-noticees along with Shri Ganesh Jewellery House, M/s. Ocean Shipping and Clearing Agency, Indo Friends Agency.

As rightly pointed out by the learned Advocate for the respondent that there is no allegation against the respondent in the show-cause notice of any abetment or connivance with the importer. This aspect has been clearly brought out by the learned Tribunal in its order, as could be seen from paragraphs 14 to 16 of the impugned order. This factual position could not be controverted by the department.

Thus, we find no questions of law, much less substantial question of law, arises for consideration in this appeal.

Accordingly, the appeal fails and is dismissed.

The stay application IA No:GA/2/2024 is also dismissed.

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

(HIRANMAY BHATTACHARYYA, J.)

SN.
AR(CR)