OD - 6

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

CUSTA/15/2020
IA NO: GA/1/2020
COMMISSIONER OF CUSTOMS
(PREVENTIVE), WEST BENGAL,
KOLKATA
VS
M/S. ANUTHAM EXIM PVT. LTD.

BEFORE :
THE HON'BLE JUSTICE SURYA PRAKASH KESARWANI
-A N D-
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ
DATE : 9TH February, 2024.

*Appearance :*
*Mr. Rahul Tangri, Adv.*
*...for respondent.*

The Court :- 1. When the case was called on none appears in favour of the appellant. Mr. Rahul Tangri, learned Counsel for the respondent is present.

2. Learned Counsel for the respondent submits that against the demand of bank guarantee for provisional release of goods in question, the respondent herein filed Customs Appeal No. 75199 of 2020 which was allowed vide final order OF/75392/2020 dated 1.9.2020 passed by the Customs, Excise and Service Tax Appellate Tribunal, Eastern Zonal Bench, Kolkata permitting for release of goods on condition of executing Indemnity Bond and undertaking to pay the amount of differential duty as may be imposed by the Customs Authority while making the final assessment, instead of bank guarantee. The operative portion of the aforesaid order of the Tribunal dated 1.9.2020 is reproduced below :-

"*In view of the above discussion, I, direct the respondent Revenue to allow the import of consignments of the Appellant without insisting on any Bank Guarantee with immediate effect. The respondent Revenue is expected to adhere to this order in letter and spirit, without causing any further loss of business to the Appellant. The appellants shall be permitted to release the goods on condition of their executing Indemnity Bond agreeing and undertaking to pay the amount of differential duty as may be imposed on them by the Customs authorities while making the final assessment, instead of bank guarantee.*"

3. We have carefully considered the submission of learned Counsel for the respondent and perused the impugned order of Tribunal and Memo of Appeal. We find force in the submission of the learned Counsel for the respondent as aforenoted. By the impugned order the Tribunal has merely directed for provisional release of goods on execution of Indemnity Bond and an undertaking to pay for differential duty as may be imposed by the Customs Authorities while making the final assessment, instead of bank guarantee. With respect to an earlier consignment of the same commodity the final assessment has taken place and by the order of the Commissioner (Appeals) it was decided in favour of the respondent assessee and the order of the Commissioner (Appeals) was upheld by the aforesaid order of the Tribunal and appeal filed by the department to challenge the order of the Tribunal was dismissed by Hon'ble Supreme Court.

4. We also find that the final assessment in respect of an earlier consignment was made by the Customs Authorities against which the respondent assessee preferred an appeal before the Commissioner of Customs (Appeals), which was allowed. Against the order of the Commissioner of Customs (Appeals), the appellant herein preferred an appeal before the Tribunal which was dismissed by the Tribunal by final order No. 75031/Kol/2021 dated 25.1.2021. Against the order of the Tribunal the appellant herein preferred Civil Appeal No. 7176 of 2021 before Hon'ble Supreme Court which was dismissed by order dated 4.5.2023.

5. In view of the aforesaid position, the appellant has no case on merit, inasmuch as, the final assessment in respect of the same commodity imported relating to previous consignment has attained finality. That apart, by the impugned order the Tribunal has permitted provisional release of goods on Indemnity Bond and an undertaking instead of bank guarantee.

6. Thus, we find that no substantial questions of law is involved in the impugned order of the Tribunal.

7. For all the reasons aforestated, the appeal is dismissed at the admission stage.

(SURYA PRAKASH KESARWANI, J.)

(RAJARSHI BHARADWAJ ,J.)

pkd/GH.