OD-14

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

CUSTA/48/2024
IA NO: GA/1/2024
Commissioner Of Customs Port Kolkata
VS
Hydraulic Study Department Kolkata Port Trust

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S SIVAGNANAM
-A N D-
HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
DATE : 10th July, 2024.

Appearance :
Mr. Kaushik Dey, Adv.
Mr. Tapan Bhanjan, Adv.
...for appellant.

Mr. Ritzu Ghosal, Adv.
...for respondent

The Court :- This appeal by the revenue is directed against the order dated 22.9.2023 passed by the Learned Customs, Excise and Service Tax Appellate Tribunal, Regional Bench, Court – 2 Kolkata, in Customs Appeal No. 248 of 2010.

The revenue has raised the following questions of law for consideration.

i) Whether in the facts and circumstances of the instant case the learned Tribunal was right and justified in extending the benefit of exemption Notification No. 70/80-Customs dated 26.03.1981 and Notification No. 152/94-Customs dated 13.07.1994 in favour of the respondent?

ii) Whether in the facts and circumstances of the instant case the Learned Tribunal was right and justified in setting aside the order-in-original dated 20.05.2010 and thereby quashed the demand of duty under section 28 of the Customs Act, 1962 and mandatory penalty under section 114A of the Customs Act, 1962 imposed upon the respondent?

We have learned advocates appearing on behalf of the appellant.

The correctness of the order passed by the adjudicating authority namely, the Commissioner of Customs [Port], Kolkata dated 20.5.2010 was challenged by the assessee before the tribunal. The matter involves admissibility of exemption notification no.70/81-Cus dated 26.3.1981 and notification no.152/94-Cus dated 13.7.1994, benefit of which was allowed by the adjudicating authority.

Subsequently, there was a remand of the matter pursuant to the order passed by the tribunal dated 20.11.2001. pursuant to such remand, on a de novo consideration the Commissioner of Customs imposed duty of Rs.7,07,77,168/- under section 28AB of the Customs Act, 1962 besides imposing penalty. This order was put to challenge by the Kolkata Port Trust. Contending that the Port Trust through its research wing namely the Hydraulic Study Department undertakes research work in various aspects of Hydraulic behavior of Bhagirathi-Hooghly River System and has been recognized as the scientific research and development unit by the Ministry of Surface Transport, Government of India. This organization imported certain goods for carrying out its objectives and they sought to have concession in terms of the notification dated 26.3.1995 and 13.7.1994 which exempts them from payment of customs duty as such goods are imported by a research institution subject to the research institution furnishing a certificate issued by the specified officer of the administrative ministry concerned not below the rank of under secretary. The administrative controlling ministry namely, the Ministry of Surface Transport, Government of India granted the requisite certificate of exemption for import of various scientific machinery, equipment, instruments, apparatus and other accessories and spare parts in favour of the Hydraulic Study Department of the Kolkata Port Trust. The bills of entry was filed by the controller of stores as the agent of Kolkata Port Trust and clearance was done by the material management department on behalf of the Port Trust by show cause notice dated 7.9.1999 was issued alleging that the Port Trust had submitted false and wrong declaration and they had imported the goods as scientific instruments for the purpose of using the same in commercial activities and the concession in both the notifications, referred to above, is not applicable. The Port Trust submitted their reply contending that they are a statutory authority and they cannot charge for usage of VTMS imported a facility not recognized by Maritime rules and the scale of rates were separately fixed.

As noted above, the Commissioner of Customs by an order dated 29.12.2000 confirmed the demand of duty and imposed penalty by denying the benefit of exemption notification. When the matter travelled to the tribunal in the first round, the tribunal faulted the Commissioner for rejecting the certificate issued by the Ministry of Surface Transport and also noted that the subsequent certificates given by the appropriate authority has been accepted by the Customs department, therefore, the matter was remanded. Once again, the Commissioner has affirmed the demand show cause notice which was challenged before the tribunal. The tribunal has re-appreciated the factual matters and noted that there is no error in the bills of entry being presented in the name of the controller of stores of the Kolkata Port Trust which has been made the agent of the importer and the bills have been presented on behalf of the Principal namely, Port Trust. Furthermore, the tribunal noted in the bills of lading which has been generated by the exporter the name of the importer has been shown to be of the Port Trust. The invoice raised by the exporter also shows the name of the importer as Hydraulic Study Department of the Kolkata Port Trust. Thus, taking note of the factual situation, the learned Tribunal has dismissed the appeal filed by the Department and allowed the appeals filed by the assessee.

Thus, we find there is no question of law much less substantial question of law arises for consideration in this appeal. Consequently, the appeal fails and dismissed.

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(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

pkd/GH.