OD-13 TO 16

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/167/2024
IA NO: GA/1/2024, GA/2/2024
THE ADDITIONAL COMMISSIONER OF CUSTOMS
(PREVENTIVE) C.C.(P), WEST BENGAL
VS
ASHOK KUMAR JAIN AND ORS.

APOT/168/2024
IA NO: GA/1/2024, GA/2/2024
THE ADDITIONAL COMMISSIONER OF CUSTOMS
(PREVENTIVE) C.C.(P), WEST BENGAL
VS
DAULAL SARDA AND ORS.

APOT/169/2024
IA NO: GA/1/2024, GA/2/2024
THE ADDITIONAL COMMISSIONER OF CUSTOMS
(PREVENTIVE) C.C.(P), WEST BENGAL
VS
DAULAL SARDA AND ORS.

APOT/170/2024
IA NO: GA/1/2024, GA/2/2024
THE ADDITIONAL COMMISSIONER OF CUSTOMS
(PREVENTIVE) C.C.(P), WEST BENGAL
VS
JUVRAJ BOTHRA AND ORS.

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

Appearance :
Mr. K.K. Maiti, Adv.
Mr. Kaushik Dey, Adv.
Mr. Tapan Bhanja, Adv.
…for appellants.
Mr. Prabhat Ranjan, Adv.
Mr. Hemant Tiwari, Adv.
…for respondent no. 1

The Court :- Heard learned advocates on either side.

All these appeals have been filed by the department against a common order passed by the learned Single Bench dated 22.09.2023. The challenge in the writ petition was to order of adjudication passed by the adjudicating authority. The writ petition was allowed and the order of adjudication was set aside and the matter stands remanded to the adjudicating authority to pass a fresh adjudication order. All these appeals have been filed beyond the period of limitation and there is a delay of 186 days.

Mr. Prabhat Ranjan, learned Advocate appearing for the respondent/assessee would submit that the delay has not been properly explained and would oppose the prayer for condonation of delay. However, since we have heard the matter on merits and we exercised the discretion and condoned the delay in filing the appeal, as could be seen from the impugned order the learned Single Bench had taken into consideration the decision of the High Court of Patna in the case of Union of India Vs. Salsar Transport Company in Civil Writ Jurisdiction Case No. 3784 of 2013 dated 24.07.2013. The facts of the said case are identical to the facts before us. Reliance on the report submitted by the Arccanut Research & Development Foundation, Mangalore, was held to be not a report which can be relied on by the competent authority as there was nothing to show that the said agency is an accredited laboratory by the competent authority. The revenue carried the matter on appeal before the Hon'ble Division Bench of High Court of Patna and the appeal was dismissed by order dated 25.11.2013. As against that the department preferred the appeal before the Hon'ble Supreme Court and the Special Leave Petition was dismissed by order dated 8th May, 2024. The learned Single Bench after taking note of the decision of the High Court of Patna as affirmed by the Hon'ble Supreme Court also referred to the letter issued to the Ministry of Agriculture and Farmer Welfare dated 4.1.2018 and came to the conclusion that the adjudication order passed on the report to an agency which was not accredited laboratory cannot be sustained and, therefore, the order of adjudication was set aside and the matter was remanded back to the adjudicating authority to pass fresh order in accordance with law, after getting the betel nut in question tested in a Government approved laboratory.

However, the learned Single Bench has noted the submission made on behalf of the Arccanut Research & Development Foundation, Mangalore, which was the private respondent in the writ petition, which appears to have supported the legal contention raised by the writ petition that the laboratory upon test of which the Customs Authority has relied is not a Government approved laboratory and as such the test with regard to the origin of betel nut is not reliable and acceptable.

In fact, the learned Single Bench has recorded the consent of the department in this regard. However, though the said establishment is sought to be disputed before us nonetheless we are convinced that the reasoning given by the learned Single Bench is just and proper and does not call for any interference, that apart the matter having been sent back for fresh consideration after obtaining test report from Government approved laboratory, we find no ground to interfere with the impugned order.

Mr. K.K. Maiti, learned Advocate appearing for the appellant department submitted that the goods have been provisionally released to the respondent, the adjudicating authority while adjudicating the case, he has to specifically consider whether the goods are of foreign origin and whether they have been smuggled into India. Since the matter has been remanded back to the adjudicating authority which is an open remand, it will be well within the jurisdiction of the adjudicating authority to consider all aspects of the matter.

With the above, all the appeals and applications are disposed of.

.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

pkd/GH.