OD -5

WPO/671/2024
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

M/S. BALLIANS AGRO FOOD PROCESSING PVT. LTD. AND ANR.
VS
UNION OF INDIA AND ORS.

BEFORE :
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ
Date : 21st November, 2024

<u>*Appearance :*</u>

Mr. Arijit Chakrabarti, Adv.
Mr. Debaditya Banerjee, Adv.
Mr. Syed Wasim Faruque, Adv.
For petitioners
Ms. Manasi Mukherjee, Adv.(VC)
Ms. Aishwarya Rajyashree, Adv.
For Customs Authority
Mr. P.K. Bhowmick, Adv.
Mr. Soumen Bhattacharjee, Adv.
For Union of India

The Court : Learned counsel appearing for the petitioners submits that the Commissioner of Customs (Appeals) has passed an appellate order dated 8th November, 2023, which is as follows:-

> "41. In light of the above considerations, Specifically, CBIC Circular No. 163/19/2021-GST, dated 6-10-2021 issued vide F. No. 190354/206/2021 – TRU, Bag Industries, 2023 (384) E.L.T. 119 (A.A.R. – Cus. – Mum) and Bill of entry no. 3644039 dated 08.12.2022 as submitted by the appellant, I set aside the impugned

Order-in-Original No. KOL/CUS/PORT/ADC/54/2023 dated 04.05.2023. I affirm the classification of the imported goods under Customs Tariff Item No. 21069030 as declared by the appellant with benefit of Notification No. 96/2008 dated 13.08.2008.

I also set aside the re-determined value, which amounts to Rs.42,37,723.88/-, and order that the imported goods be assessed based on the declared invoice value. The confiscation of the goods is also set aside, and I order the release of the goods for home consumption subject to NOC from FSSAI.

I set aside the penalties imposed on the importer, M/s. Ballians Agro Food Processing Pvt. Ltd, under Section 112(a)(i) and Section 114AA of the Customs Act, 1962. Since the imported goods are not liable for confiscation, I also set aside the penalties imposed on Shri Abhishek Gupta, the partner of M/s. Ballians Agro Food Processing Pvt. Ltd, under Section 112(a)(i) and Section 114AA of the Customs Act, 1962.

Accordingly, the appeal filed by the appellant is allowed with consequential relief on above terms."

Learned counsel further submits that though the order has already been passed by the Commissioner of Customs (Appeals) way back on 8th November, 2023 but till date the goods have not been released by the authorities.

Learned counsel appearing for the Customs Authorities submits that they have preferred an appeal and also made an application for stay but no stay order has been granted in their favour.

Heard learned counsel for the parties. As the Commissioner of Customs (Appeals) has already passed his order dated 8th November, 2023 and there is no order of stay by the Tribunal, it is hereby directed to the respondent no.5 being the Deputy/Assistant Commissioner of Customs (Group 1B), Kolkata Customs House, 15/1 Strand Road, Kolkata – 700001 to release the goods imported vide Bills of Entry No. 2815602 dated 10.10.2022, which was confiscated vide Order dated 01.12.2022 in terms of section 110(1) of the Customs Act, 1962, in favour of the petitioners within a period of fifteen days from date.

The writ petition being WPO No. 671 of 2024 is thus disposed of.

No order as to costs.

(RAJARSHI BHARADWAJ, J.)

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