OD–13

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION
ORIGINAL SIDE

CUSTA/11/2023
IA No: GA/1/2024
M/S. PRAKASH OVERSEAS
VS.
COMMISSIONER OF CUSTOMS (PORT), KOLKATA

BEFORE :

THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 15th March, 2024

<u>Appearance</u> :
Mr. Avra Mazumder, Adv.
Mr. Amit Kumar, Adv.,
Ms. Alisa Das, Adv.
...for appellant/petitioner
Mr. K.K. Maiti, Adv.
Mr. Tapan Bhanja, Adv.
...for respondent

The Court : We have heard Mr. Avra Majumder, learned Counsel for the appellant and Mr. K.K. Maiti, learned Counsel appearing for the respondent.

This appeal filed by the appellant/assessee under Section 130 of the Customs Act, 1962 (the Act) is directed against a Miscellaneous Order No. 75286 of 2023, dated 10th July, 2023 passed by the Customs, Excise and Service Tax Appellate Tribunal, Eastern Zonal Bench, Kolkata, in Customs Miscellaneous Application No. 75568 of 2023 (ROM). The appellant has raised the following substantial questions of law for consideration.

i) Whether the Learned Tribunal erred in law by enhancing the quantum of redemption fine and penalty while passing the impugned order dated 10th July, 2023 ?

ii) Whether the Learned Tribunal erred in law in not appreciating the scope of the powers of rectification under Section 129B(2) of the Act ?

iii) Whether the Learned Tribunal erred in law in not appreciating that the findings contained in paragraphs 5 and 6 of the order dated 2nd June, 2023, are erroneous in light of the discussions contained in the preceding paragraphs therein ?

We have heard Mr. Avra Majumder, learned Counsel for the appellant and Mr. K.K. Maiti, learned Counsel appearing for the respondent.

The assessee had preferred an appeal before the Tribunal challenging the order passed by the Commissioner (Appeals) of Customs, Kolkata, dated 29th January, 2014 in Order-in-Appeal No. 149-151/CUS/(Apprg)/KOL(P)/2014, dated 29.1.2014. By the said order the Commissioner of Customs had imposed redemption fine of 30% and personal penalty of 10% on the appellant. The Tribunal after considering the submissions on either side has affirmed the order passed by the Commissioner of Customs (Appeals). The appellant filed an application for rectification on the ground that there is an inconsistent observation in paragraph 5 of the order passed by the Tribunal dated 2nd June, 2023 wherein the Tribunal in the first three lines of paragraph 5 of the order has observed that the redemption fine and penalty imposed to the tune of 10% and 5% respectively on assessed value is sufficient. However, in the next sentence in paragraph 5 the Tribunal has recorded that the redemption fine and penalty confirmed by the Commissioner (Appeals) are sufficient to meet the ends of justice. This according to the appellant was required to be rectified. The Tribunal considered the application and has rejected the same by the impugned order.

We find from a careful reading of the order passed by the Tribunal dated 2nd June, 2023, the Tribunal placed heavy reliance on a coordinate Bench of Mumbai Tribunal in the case of Venus Traders v. Commissioner of Customs (Import), Mumbai, reported in 2019(365) ELT 958 (Tri.-Mumbai). In the said decision rendered by the Mumbai Tribunal, the redemption fine and penalty imposed on the said assessee was 10% and 5% respectively. Therefore, that has been quoted by the Tribunal. However, in respect of the appellant's case the Tribunal has affirmed the redemption fine and penalty as confirmed by the Commissioner (Appeals). We find that the factual aspects was taken into consideration and the Commissioner (Appeals) had affirmed the penalty, which view has been affirmed by the Tribunal.

Thus, we find there is no question of law much less substantial question of law arising for consideration in this appeal.

The appeal thus fails and is dismissed.

The stay application is also dismissed.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

SN.
AR(CR)