OD-15

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

CUSTA/27/2023
IA NO: GA/1/2023
UMESH JAIN
VS
UNION OF INDIA AND ORS.

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE JUSTICE SUPRATIM BHATTACHARYA
DATE : 5TH January, 2024.

*Appearance :*
*Mr. Shovendu Banerjee, Adv.*
*Mr. Soumyajit Mishra, Adv.*
*..for appellant.*
*Mr. Kaushik Dey, Adv.*
*Ms. Manasi Mukherjee, Adv.*
*....for respondents*

The Court :- We have heard learned Counsel on either side.

This appeal filed by the assessee under Section 130 of the Customs Act, 1962 (the Act) is directed against the order dated 19th June, 2023 passed by the Customs, Excise, Service Tax Appellate Tribunal, Eastern Zonal Bench, Kolkata (the Tribunal) in impugned order No. Defect Misc. No. 266 Dated 19th June, 2023. The assessee raised the following substantial questions of law for consideration :-

1. Whether the Learned Tribunal should have considered and erred in law in not considering that, as such, there is no delay on part of the petitioner as the impugned Order-in-Original no.06/07 dated 28.02.2007 was served

upon the appellant for the first time under the cover of the letter 8.11.2019 and within 90 days from the date of knowledge of the impugned order the petitioner has preferred an appeal before the Ld. Tribunal.

2. (2)Whether the Learned Tribunal should have considered and erred in law in not considering that the Show Cause Notice dated 19.09.1983 and the Order-in-Original dated 28.02.2007 passed solely relying on the statements of the co-noticees or co-accused without providing any opportunity of cross examination to your petitioner and your petitioner have otherwise a very good case on merit.
3. Whether the Learned Tribunal should have considered and erred I law in not considering that if natural justice is violated at first stage, the right of appeal is not so much a true right of appeal as a corrected initial hearing, instead of fair trial followed by appeal, the procedure is reduced to unfair trial followed by fair trial.

The appeal filed by the assessee before the learned Tribunal was time barred and an application for condonation of delay of 463 days was filed. The learned Tribunal after considering the facts and circumstances of the case found that the assessee has been indulging in delaying tactics ever since 2003 and after the de novo proceeding was initiated by the adjudicating authority in 2003 the assessee for the first time stated that they have not received the copy of the show cause notice. The other contention that the order in original was never served on the assessee was also considered by the learned Tribunal and found to be incorrect statement made on behalf of the assessee.

Thus, we find there is no substantial question of law arises for consideration and, therefore, we are inclined to confirm the finding rendered by the learned Tribunal. However, considering the fact that there were five co-noticees along with the assessee and three of them have been imposed penalty of Rs.5 lakh each and one other co-noticee had filed an appeal before the learned Tribunal in Customs Appeal no.154 of 2009 and the learned Tribunal had reduced the penalty to Rs.50,000/-.

Thus, we are of the view that the assessee also being a co-noticee along with others, who had the benefit of the learned Tribunal which reduced the amount of penalty, we are inclined to extend the same benefit to the present appellant as well.

For the above reason, while affirming the order passed by the learned Tribunal, the penalty imposed on the appellant/assessee is reduced from Rs.5 lakh to Rs.50,000/- as granted to the other co-noticees pursuant to the orders passed by the learned Tribunal.

The appeal is, accordingly, stands disposed of.

.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(SUPRATIM BHATTACHARYA,J.)

pkd/GH.