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Devendra Kumar Dugar Vs. Commissioner of Customs (Port) and ors.

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Court : Kolkata

Decided On : Mar-28-2014

Judge : Harish Tandon

Appellant : Devendra Kumar Dugar

Respondent : Commissioner of Customs (Port) and ors.

Judgement :

ORDER

SHEET W.P.No.223 of 2014 IN THE HIGH COURT AT CALCUTTA Constitutional Writ Jurisdiction ORIGINAL SIDE DEVENDRA KUMAR DUGAR Versus COMMISSIONER OF CUSTOMS (PORT) & ORS.BEFORE: The Hon'ble JUSTICE HARISH TANDON Date : 28th March, 2014.

Appearance : Mr.Sudhir Meheta, Adv.Mr.S.B.

Saraf, Adv.The Court : The Assessing Officer made the assessment on the bill of entry dated 2nd December 2004 which was assailed before the Commissioner of Customs (appeals) by the petitioner.

Several mistakes both clerical and ministerial were pointed out before the appellate authority and the appellate authority set aside the said assessment order made on the said bill of entry and directed the assessment officer to re-assess the said bill of entry after rectifying the clerical and ministerial mistakes and shall also

grant a consequential relief by way of a refund with interest to the petitioner.

Though, an appeal is filed before the CESTAT but the same is yet to be admitted for the procedural defects.

Be that as it may, the order of the Commissioner of Customs (appeals) has not been set aside by the higher forum.

There is no impediment on the part of the assessing officer to comply with the directions passed by the appellate authority.

The sole grievance in this writ petition that despite the said order of the appellate authority, the assessing officer is not activating the proceeding and have shown their reluctance to proceed in terms of the said directions.

The appellate authority passed in an order way back in the month of July, 2013.

The assessing officer cannot set tide over the matter and keep the proceeding in suspended animation in absence of any order of the competent forum.

This Court, therefore, directs the assessing officer to re-assess the bill of entry dated 2nd December 2004 upon rectification of clerical and ministerial mistakes indicated in the order passed by the Commissioner of Customs (appeals) and shall also consider the consequential benefits and relief by way of refund of the excess payment together with an interest at the prescribed rate.

The entire exercise shall be completed by the said assessing officer within three weeks from the date of communication of this order.

It is hereby made clear that the assessing officer shall confine its consideration within the directions made by the Commissioner of Customs (appeals) on 27th July 2013.

On the above finding, the writ petition is disposed of.

No costs.

(HARISH TANDON, J.) SBI

