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With Mr. Hasmukh Kundalia and Mr. Vipul Kundalia, Ad Vs. for Respondent Nos.1,2 and 3 : Mr. S.B. Saraf

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SooperKanoon Citation : sooperkanoon.com/1166819

Court : Kolkata

Decided On : Nov-03-2014

Judge : I. P. Mukerji

Appellant : With Mr. Hasmukh Kundalia and Mr. Vipul Kundalia, Ad

Respondent : For Respondent Nos.1,2 and 3 : Mr. S.B. Saraf

Judgement :

ORDER

SHEET W.P.No.934 of 2014 IN THE HIGH COURT AT CALCUTTA Constitutional Writ Jurisdiction ORIGINAL SIDE EMAMI LTD.Versus ASST COMMISSIONER OF CUSTOMS.SPECIAL TAX RECOVERY CELL [PORT].& ORS.Petitioner Respondents BEFORE: The Hon'ble JUSTICE I.P.MUKERJ.Date : 3rd November, 2014.

For Petitioner : Dr.

Samir Chakraborty, Sr.Adv.with Mr.Hasmukh Kundalia & Mr.Vipul Kundalia, Adversus For Respondent Nos.1,2 & 3 : Mr.S.B.Saraf with Mr.Subir Kr.

Saha, Adversus On 25th September, 2014, I directed the Customs authorities to produce the records of the case in Court today.

The material records are not produced.

Mr.Saraf, learned counsel for the respondent Nos.1, 2 and 3, submits that these records are misplaced and could not be retrieved.

It appears from a copy of a document handed up to this Court by Mr.Chakraborty, learned senior counsel for the petitioner, that an order in original was passed by the Assistant Commissioner of Customs on 24th September, 2009.

In that order there was a presumption that the licensee had made importation of the goods of CIF value of Rs.91,80,000/-.

The duty forgone was taken as Rs.91,80,000/- being hundred per cent of the CIF value.

It appears from the records that the 8th March, 2006 order, referred to in the said order dated 24th September, 2009, was passed on 16th March, 2006 [see Annexure P-1 at page 28 of the petition].It further appears from the records that this order dated 16th March, 2006 was challenged in appeal.

By the order in appeal dated 8th June, 2006, the order dated 16th March, 2006 was set aside.

Therefore, it is quite clear that the premises on which the purported order dated 24th September, 2009 was passed, that is the 16th March, 2006 order, was not in existence when the order dated 24th September, 2009 was passed.

Furthermore, non-availability of the records raises a presumption against the revenue from which an adverse inference can be drawn.

Therefore, the show-cause notice and all the proceedings culminating in the order dated 24th September, 2009 are set aside.

Consequently, the demand and threat contained in the letter dated 15th September, 2014 of the Assistant Commissioner of Customs.Special Tax Recovery Cell [Court]., Customs House, Kolkata, being annexure P-6 of the petition at page 42, are not to be given any effect.

In the event, the records of this case are retrieved, this will not prevent the Customs authorities to take such steps, as they may be advised to take.

Certified copy of this order, if applied for, be supplied to the parties upon compliance with requisite formalities.

(I.P.MUKERJI, J.) K.

Banerjee A.R.[C.R.].

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