Commissioner of Customs Vs. Varma and Sons

Commissioner of Customs Vs. Varma and Sons

SooperKanoon Citation : sooperkanoon.com/19020

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-28-2000

Reported in : (2000)(122)ELT99Tri(Mum.)bai

Appellant : Commissioner of Customs

Respondent : Varma and Sons

Judgement :

1. The Tribunal vide order No. 3799/98/WRB dated 8-10-1998 C.I allowed the appeal filed by the CHA and remanded the proceedings back to the jurisdictional Commissioner. Vide the order impugned before the Tribunal, the Commissioner had suspended the licence of the CHA in terms of Regulation 21(2) of the CHA Licensing Regulations, 1984. In this order of the Tribunal, the Tribunal examined a number of judgments in view of the fact that there was no specific requirement for the Commissioner to issue a notice before taking such action under Regulation 21(2). The Tribunal, however, observed that this Regulation did not waive the application of Regulation 23. The Tribunal also relied upon the Supreme Court judgment in the case of East India Commercial Co. Ltd. [1983 (13) E.L.T. 1342 (S.C.)]. In this judgment, it is laid down that even if the statute did not provide for a show cause notice, it was incumbent upon the quasi judicial authority to disclose the grounds on which the action was proposed to be taken against the concerned person. In the light of the examination of the Sub-regulation 21(2) and 23, the Tribunal has remanded the proceedings.

2. Against this decision, the present application has been filed by the Revenue. The question raised for reference reads as follows "Whether or not it is mandatory to issue a show cause notice to CHA before suspension of licence under Regulation 21(2) of Custom House Agents Licensing Regulations 1984 in the absence of a specific provision for the same." 3. In the light of the discussions made by the Tribunal in the cited order, what was required of the ld. applicant Commissioner was to cite certain judgments which would show that the Tribunal's conclusion was not well founded. An application seeking reference to High Court is a very serious preposition. First of all, it has to be decided that there is a substantial question of law arising out of the impugned judgment.

It cannot be merely a point of law nor a minor question referable. This has been held by the Gauhati High Court. Where the Tribunal cites an order of the Supreme Court in arriving at a decision, the job of the applicant Commissioner becomes even more onerous.

4. We find that the ld. Commissioner took such difficult task in a light manner. The question raised remains in a vacuum in the absence of justification as to why it should be referred to the Hon'ble High Court. We do not consider it necessary to refer. The Reference application is dismissed.

5. A copy of this order should be marked to Chief Commissioner of Customs.