SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Uma Sons Vs. Additional Collector of Customs

Uma Sons Vs. Additional Collector of Customs

SooperKanoon Citation : sooperkanoon.com/6526

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-28-1991

Reported in : (1991)LC531Tri(Delhi)

Appellant : Uma Sons

Respondent : Additional Collector of Customs

Judgement :

1. This is an application for dispensing with pre-deposit of duty. The appellants imported No. 5 Zippers and the Side-Tape. The Asstt.

Collector raised a dispute as to the valuation of Zipper No. 5 and also disputed the licences which were submitted by the appellants for the release of the goods. The appellants filed a Writ Petition in the Bombay High Court No. 1297 of 1991.

2. The Bombay High Court while disposing of the Writ Petition passed the following order: "Respondents No. 1 to 3 do immediately permit the petitioner to put the "Side Tape for Metal Zippers" covered under Bill of Entry bearing No. 6541 dtd. 17-1-1991 being Exhibit 'A' to the Petition in a Bonded warehouse under Section 49 of the Customs Act, 1962".

3. The Addl. Collector in pursuance of the order of the High Court on the Bill of Entry made the following endorsement while permitting the appellants to warehouse the goods under Section 49. Section 49 may be allowed for Item No. 2 after payment of duty only.

4. The main grievance of the appellants is that the adjudication proceedings are pending before the Addl. Collector. The direction of the High Court is to warehouse the goods under Section 49. However, the Addl. Collector directed the payment of duty even before the adjudication proceedings are concluded. He also submitted that the endorsement of the Collector on the back of the Bill of Entry is contrary to Section 49. Therefore, he sought dispensing with pre-deposit of duty pending disposal of the appeal. He also submitted relying on the order of the East Regional Bench reported in 1991 (33) ECR 71 and South Regional Bench reported in 1986 (26) E.L.T. 873 that he need not approach the High Court for getting his grievance redressed and he can avail the appeal before this Tribunal under Section 129A of the Customs Act, 1962.

5. Shri Ganu, the ld. SDR appearing for the Department opposed the prayer and submitted that the adjudication proceedings are pending and the appeal is not maintainable before the Tribunal as there is no order or decision against which the appellant can file an appeal before this Tribunal. He also pointed out that the endorsement of the Addl.

Collector on the Bill of Entry is an interlocutory order pending disposal of the adjudication proceedings.

6. We have already extracted the order of the Bombay High Court. The High Court directed the Asstt. Collector to warehouse the goods under Section 49. Section 49 contemplates warehousing of the goods without payment of duty. When the High Court directed the Addl. Collector to warehouse the goods, it does not mean that he should warehouse the goods in contravention of Section 49. The Collector ought to have complied with the direction of the High Court in its true spirit and sense. Since there is violation by the Addl. Collector in complying with the direction of the High Court, it is proper for the appellant to bring it to the notice of the High Court the violation committed by the Addl. Collector. We dispose of the application in the above terms. A copy of the order may be issued 'Dasti' to both the parties.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com