The Commissioner of Customs and anr. Vs. M/S. Karan Exports (India) Pvt. Ltd. and ors.

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SooperKanoon Citation : sooperkanoon.com/906025

Court : Kolkata

Decided On : Sep-17-2010

Judge : Bhattacharya, ; Dr. Sambuddha Chakrabatri, J J.

Appeal No. : WP No. 436 of 2010

Appellant : The Commissioner of Customs and anr.

Respondent : M/S. Karan Exports (India) Pvt. Ltd. and ors.

Advocate for Def. : Mr. Pranab Kumar Dutta ; Mr. S. Banerjee, Advs.

Advocate for Pet/Ap. : Mr. K.K. Maiti, Adv.

Judgement :
The Court : Instead of disposal of the application, we propose to hear out the appeal itself by treating it as on days list as this appeal can be disposed of on a pure question of law.

There is no dispute that the writ petitioners, who are respondents before us, had challenged an order dated 25th April, 2007 passed by the learned Customs Excise and Service Tax Appellate Tribunal, Kolkata by filing a writ petition, being W.P.No.800 of 2007. The said writ petition was disposed of on 22nd May, 2009 by directing the Commissioner of Appeal to hear out the appeal arising out of the original order dated 14th November, 2005 without insisting on pre-deposit of Rs.1

Lac as directed by the Tribunal by the order 25th April, 2007 within a period of eight weeks from the date of communication of that order.

Pursuant to such direction, the Commissioner of Customs heard the appeal and disposed of the same on 10th November, 2009 by setting aside the order impugned in the appeal with further direction upon the original authority to take a fresh decision. By the said order the original authority was directed to get the representative samples tested and/or on receipt of the test report the said authority was directed to decide the case afresh.

The Appellate authority further held that since the matter had been pending for so many years, the re-testing should be made within three months and de novo order, if any, should be passed within a month thereafter. The Appellate authority further noted that in terms of the High Courts order the bank guarantee was required to be kept alive till decision and communication of the order by the Commissioner (Appeal) and thus the appeal having been disposed of in favour of the writ petitioners the bank guarantee was required to be returned to the writ petitioners after the receipt of the order. Pursuant to such direction given by the Commissioner of Customs (Appeal), the writ petitioners by a letter dated 16th November, 2009 requested the Customs authorities to act in terms of the said order and to release the bank guarantee. As such request was turned down, the respondents before us filed their second writ application out of which the present appeal arises.

We find that the Learned Single Judge by the order impugned directed the appellants to return the bank guarantee to the Vice President, ING Vysya Bank Limited, Middleton Street Branch, Kolkata-700 071 with further direction upon the Bank to cancel the bank guarantee. Being dissatisfied the appellants have come up with the present appeal.

Learned Advocate appearing on behalf of the appellants tried to convince us that against the order of the Appellate authority his client has already filed a provisional application under Section 129-ED of the Customs Act, 1962 and the same is pending, this Court should set aside the order impugned and should pass a direction upon the provisional authority to hear out the said revision application.

Mr. Dutta, learned Advocate appearing on behalf of the writ petitioners/respondents, however, has opposed the contention raised by the learned Advocate for the appellants and has contended that so long any stay order is not granted by the provisional authority, the appellants are bound to return the bank guarantee in terms of the order of the Appellate authority and in such case the Learned Single Judge rightly passed the direction in the order impugned.

After hearing the learned Counsel for the parties and after going through the materials on record, we are at one with the Learned Single Judge that so long the appellants fail to obtain any interim order from the provisional authority, there was no just reason of retaining the bank guarantee and re-testing the goods. It appears that the order impugned was passed on 26th April, 2010 and on our enquiry the learned Advocate for the appellants fairly conceded that till today his client has not obtained any interim order of stay from the provisional application. We thus find that in the facts of the present case the Learned Single Judge rightly passed the order impugned and we do not see any reason to come to a different conclusion than the one taken by the Learned Single Judge. However, we make it clear that we have otherwise not gone into the merits of the provisional application and the parties will be bound by any interim order passed by the provisional authority if not set aside by higher appropriate forum. The appeal is devoid of any substance and is dismissed with costs, which we assess at 100 GMs.Costs be paid within fortnight today. In view of disposal of the appeal itself, the connected application has become in fructuous and the same is disposed of accordingly.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.