(2010) 08 CAL CK 0015

In the Calcutta High Court

Case No : CUSTA No. 14 of 2009

A.L. Saif International APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 11-08-2010

Acts Referred:

Customs Act, 1962 — Section 129(D)

Citation : (2011) 183 ECR 207 : (2010) 260 ELT 27

Hon'ble Judges : Sengupta, J;Kanchan Chakraborty, J

Bench : Division Bench

Advocate : Banerjee, for the Appellant; Hazra, for the Respondent

Judgement

1. The Court: This appeal is against the judgment and order of the learned Tribunal (Customs, Excise & Service Tax Appellate Tribunal, Eastern Zonal Bench, Kolkata) dated 9th November [2010 (261) E.L.T. 256 (Tribunal)] whereby and whereunder 22 appeals have been disposed of by the impugned judgment and order. This appeal was admitted by an order of this Court on 7th January, 2010 on the following substantial question of law:

(a) Whether the Learned Tribunal is justified in rejecting contention of the Appellant before us that the appeal cannot be entertained and disposed of by the Commissioner (Appeals) beyond the prescribed period of limitation?

(b) Whether the Learned Tribunal has erred in law in not holding that no fresh materials or fresh facts can be entertained in the application for review?

2. It appears that at the time of admission the Court perhaps read the judgment and order prima facie. Now after hearing Mr. Banerjee, learned senior Counsel appearing for the Appellant and minutely going through the judgment and order, it appears to us that the learned Tribunal has not decided anything else. In this matter as we understand from Mr. Banerjee and as well as from the order of the commissioner which was impugned before the learned Tribunal unsuccessfully involves the following important points:

(1) Whether the review made by the authority concerned was permissible under the law or not;

(2) Whether such an attempt of review would pass a test of legal propriety as mentioned in Section 129(D) of the Customs Act, 1962.

3. We find the learned Tribunal has not decided anything else, merely recorded inconsistent submissions and statements. Mr. Hazra, learned Counsel appearing for the Respondent, is unable to support the judgment as he is unable to understand what has been decided. We have read as many times as required in a matter of this nature and we failed to understand what is the decision making process or even what is the decision. We feel that this judgment and order is a product of absolute non-application of mind though the aforesaid points, as we have indicated inexhaustibly, were raised and nothing has been discussed and decided. This order cannot be allowed to remain. Hence, the same is set aside. We remand the matter for fresh hearing by an appropriate bench of the learned Tribunal in which the earlier vice-president will not be a party. All points are kept open and should be agitated afresh.

4. We make it clear that the point of limitation has to be decided first before dealing with the other points that may be agitated. We desire that this appeal this time should be re-heard within a period of two months from the date of communication of this order.

5. Since the decision has not been rendered in the manner as it was required to be done legally by the Tribunal, the matter is to be heard de novo, and question of legality and propriety as well as limitation of issuance of show-cause notice have been raised, in the fitness of this situation, we feel that there should be an interim order restraining the Respondents from taking any steps and further steps pursuant to the show-cause notice and this will continue for a period of two month from date of receipt of the copy of this judgment and order. However, liberty is given to the Appellant to apply for extension of the interim order before the Tribunal which will consider the same in accordance with law.

6. The appeal is thus disposed of.

7. We put on record that we have not decided anything else on the point of limitation.

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