(2014) 03 DEL CK 0020

In the Delhi High Court

Case No : Writ Petition (Civil) No. 1670 of 2014

Candex Chemical Fibres Co. (P) Ltd. — APPELLANT

Vs

Commr. of Cus. — RESPONDENT

Date of Decision : 18-03-2014

Acts Referred:
Customs Act, 1962 — Section 128(1)

Citation : (2014) 310 ELT 500

Hon'ble Judges : S. Ravindra Bhat, J;R.V. Easwar, J

Bench : Division Bench

Advocate : Pradeep Jain, Shubhankar Jha and Kumar Vikram, Advocate for the Appellant; Satish Aggarwala and Kamal Nijhawan, Sr. Standing Counsels, Advocate for the Respondent

Judgement

1. The matter is taken up for disposal with the consent of the parties. The petitioner claims to be aggrieved by certain conditions imposed by the respondent, as conditions precedent for provisional clearance of the imported goods.

2. The grievance particularly spelt out the duty which works out to Rs. 22 lakhs plus additional condition of furnishing bank guarantee to the tune of 20% in respect of the goods detained is onerous and is unreasonable. During the course of hearing, this Court inquired as to the availability of an appellate remedy in respect of the order of Deputy Commissioner. In this case, counsel for the respondent urged that such orders are appealable to the Commissioner (Appeals). Counsel for the petitioner, however, urged that in similar circumstances in the past the Commissioner (Appeals) and higher authorities have refused to entertain appeals on the premise that such orders are merely administrative and are, therefore, not appealable. Section 128(1) of the Customs Act, reads as follows:--

"128. Appeals to Commissioner (Appeals).-

(1) Any person aggrieved by any decision or order passed under this Act by an officer of customs lower in rank than a [Commissioner of Customs] may appeal to the Commissioner (Appeals) within three months from the date of the communication to him of such decision or order : Provided that the Commissioner (Appeals) may, if he, is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months, allow it to be presented within a further period of three months.

(2) Every appeal under this section shall be in such form and shall be verified in such manner as may be specified by rules made in behalf."

3. It is evident that an appeal lies in respect of any "decision or order passed under the Customs Act". The wide nature of the power exercised in the circumstances of the case may be gauged by the fact that the concerned authority was approached under the Customs (Provisional Duty Assessment) Regulations of 2011. Even though the show cause notice has not been concededly issued yet the nature of the orders, passed by the adjudicating authority or the Deputy Commissioner "as in this case" do have consequence. The petitioner urges that these consequences are adverse to it. As such these orders cannot be characterised as merely administrative but made under specific provisions of statutory regulations. They fall within the description of "order or decision" even on the question of the appropriateness of conditions, with respect to provisional clearance and, therefore, this Court is of the opinion that the impugned order is appealable. In view of the fact that the petitioner approached this Court under the mistaken view that an appeal did not apparently lie, this Court is of the opinion that if the concerned appellate authority i.e. appropriate Commissioner (Appeals) is approached within 4 weeks from this day with an appeal the same shall be decided expediently and within six weeks of the decision.

4. The writ petition is disposed of in the above terms. The date given earlier i.e. 5-5-2014 stands cancelled.

