(2014) 12 CESTAT CK 0002

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Stay Application No. 54941 Of 2014 In Customs Appeal No. 54319 Of 2014

C.C., New Delhi (ICD TKD) — APPELLANT

Vs

M/s. Ethan Sales And Service Trade Exporters And Communication Equipment — RESPONDENT

Date of Decision : 01-12-2014

Acts Referred:
Customs Act, 1962 — Section 110A

Citation : (2014) 12 CESTAT CK 0002

Hon'ble Judges : G. Raghuram, J;R. K. Singh, Technical Member

Bench : Division Bench

Advocate : Sajay Jain

Final Decision : Dismissed

Judgement

1. Revenue has filed appeal along with Stay Application against Order-in-Appeal Nos. CC(A)CUS/ICD/301/2014, dated 25.04.2014.

2. In this case, the respondents were allowed vide Dy. Commissionerâ??s letter dated 11.02.2014 provisional release of the seized goods imported by

them under Bill of Entry No.2924132 on payment of differential duty of Rs.38,71,898/- on execution of bank guarantee of Rs.25,06,709/-, bond for re-

determined value of goods (Rs.1,00,26,834/-) and submission of solvency certificate. The importers being aggrieved by the allegedly harsh conditions

of provisional release filed appeal before commissioner (Appeals) on the ground that such orders are appealable as held by High Court of Delhi in

W.P. No.1670/2014.

3. The commissioner (Appeals) vide the impugned order held as under:-

â??4. On perusal of provisional release order, it is seen that declared value of goods, nature of offence, are not forthcoming in the said

letter. Furthermore, at what level the decision to allow provisional release has been taken, is also not forthcoming. Since provisional release

orders are appealable, these are required to be speaking orders. The impugned order has also been issued, without hearing the appellant.

5. Therefore, the letter of provisional release is set aside, with a direction to the field officer for issue of a quick provisional release order

within 21 days of receipt of this order and also taking into consideration case laws, available on the subject.â??

4. Revenue is in appeal on the ground that the Honâ??ble High Court of Delhiâ??s judgement referred to above is at variance with CBEC letter

F.No.415/164/2013-CUS VI, dated 04.09.2013 which holds that orders under section 110A of Customs Act, 1962 are not appealable and that they are

filing appeal against the decision of High Court of Delhi.

5. Heard both sides. High Court of Delhi in the case of W.P.No.1670/2014 has held as under:-

â??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. As such these orders cannot be characterized 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.â??

6. In the light of the order of the High Court of Delhi, which has not been stayed or set aside, Boardâ??s circular dated 04.09.2013 is of no

consequence. Merely because an SLP is proposed to be filed against the said orders of the High Court of Delhi does not in any way eclipse its binding

force. Thus, the impugned order suffers from no appealable infirmity. Consequently, Revenueâ??s appeal is dismissed. The stay application is also

dismissed as infructuous.