

(2009) 12 CAL CK 0008
In the Calcutta High Court
Case No : Writ Petition No. 1282 of 2009

Century Star Shipping Ltd.	Vs	APPELLANT
Commr. of Cus. (Preventive)		RESPONDENT

Date of Decision : 23-12-2009

Acts Referred:

Citation : (2010) 255 ELT 76

Hon'ble Judges : Soumitra Pal, J

Bench : Single Bench

Advocate : Samir Chakraborty and Abhijit Biswas, for the Appellant; R. Bharadwaj, for the Respondent

Judgement

Soumitra Pal, J.—In the writ petition the petitioner, stated to be the owner of a tug, "Century Star-I", has prayed for a direction upon the customs authorities to release the said tug by furnishing a bond in terms of the provisions of the Customs Act, 1962 in favour of the respondent No. 1 and/or on such other terms and conditions as may be imposed.

2. Submission is that the tug was seized on 22nd June, 2009. Since the tug was incurring demurrage charges, the petitioner waived issuance of show cause notice and requested the authorities to complete the adjudication at the earliest on the basis of materials on record. Thereafter, matter was adjudicated. The order of confiscation was passed on 24th June, 2009. Being aggrieved the petitioner preferred an appeal being CUS Appeal No. 454 of 2009 before the learned Customs, Excise and Service Tax Appellate Tribunal, East Zonal Bench, Kolkata. Submission is that since the Tribunal does not have a second member, no Division Bench could be constituted and as such the appeal could not be heard. It is submitted since the tug is lying idle on the high sea, it is deteriorating day by day and therefore, appropriate order may be passed.

3. Heard the learned advocates for the parties. Since it has been submitted that the appeal pending before the Tribunal could not be heard and tug is on the high

sea, considering the facts and circumstances of the case, the writ petition is disposed by directing that if the petitioner deposits Rs. 75,00,000/- (Rupees Seventy Five Lakhs) being the redemption fine with the Commissioner of Customs (Preventive), West Bengal, respondent No. 1, the respondents shall release the tug within 24 hours from such deposit.

4. This order is passed without prejudice to the rights and contentions of the parties and subject to the order that may be passed in the appeal pending before the Tribunal. In the event, the petitioner succeeds, the customs authorities shall refund the amount within a month from the date of passing such order by the Tribunal. I make it clear that I have not gone into the merits of the case.

5. Since the writ petition is disposed of at the stage of admission without calling for filing of affidavits by the respondents, the allegations made in the petition are deemed not to have been admitted by them.

6. No order as to costs.

7. All parties concerned are to act on a signed copy of the minutes of the operative part of this order on usual undertakings.