(2014) 02 BOM CK 0021

In the Bombay High Court

Case No : Customs Appeal Lodging No. 27 of 2014

Commissioner of Customs (Import) APPELLANT

Vs

Hind Offshore Pvt. Ltd. RESPONDENT

Date of Decision : 14-02-2014

Acts Referred:
Customs Act, 1962 — Section 111(m), 129, 129E

Citation : (2014) 304 ELT 248

Hon'ble Judges : Mohit S. Shah, C.J;M.S. Sanklecha, J

Bench : Division Bench

Advocate : Pradeep S. Jetty, Advocate for the Appellant; V. Sreedharan, Senior Advocate and Prakash Shah and Lakshami Menon Dargaparasd Poojari i/b., PDS Legal, Advocate for the Respondent

Judgement

1. In this appeal the Revenue challenges the order dated 27 January 2014 of the Central Excise and Service Tax Appellate Tribunal ("the Tribunal") directing the revenue to allow the vessel "Geo Hindsagar." to be taken out of India to Sultanate of Oman for a period of 6 months subject to the respondent executing an undertaking with the Commissioner of Customs. Following question of law has been raised by the Revenue for our consideration.

Whether the CESTAT is right in law in directing the Revenue to release the confiscated vessel while exercising its jurisdiction u/s 129E of the Customs Act, 1962?

2. By an adjudication order dated 14 January, 2013 passed by the Commissioner of Customs the vessel "Geo Hindsagar" a Seismographic Research Ship was held to be classifiable under Chapter 89, Heading 8905 of the Customs Tariff Act, 1975. The above order confirmed the duty payable at Rs. 9.24 crores besides confiscating the vessel u/s 111(m) of the Customs Act, 1962 with an option to redeem on payment of redemption fine of Rs. 9 crores. The vessel is an Indian Flag Vessel owned by an Indian Company.

3. The respondent filed an appeal and stay application before the Tribunal. By an order dated 17 May 2013 the Tribunal granted waiver of pre-deposit of duty and penalty on the petitioner''s continuing to keep the bank guarantee of Rs. 9.24 crores as well as bond executed for the assessable value of the vessel being Rs. 98.58 crores alive till the disposal of the appeal. Besides the order dated 17 May 2013 granted stay of all proceedings pursuant to the adjudication order dated 14 February, 2013.

4. Thereafter, when the petitioner sought permission from the Revenue authorities to take the vessel "Geo Hindsagar" outside India for execution of a contract awarded to it, the Customs authorities by order dated 24 January, 2014 refused permission to take the vessel out of India, The respondent then filed application before the Tribunal which was allowed by the impugned order dated 27 January, 2014. The impugned order dated 27 January, 2014 has directed the Customs to allow the vessel to be taken to Sultanate Oman by the respondent on their executing an undertaking with the Commissioner of Customs that they would get the vessel back within a period of 6 months.

5. The order passed by the Tribunal on 17 May, 2013 was not an order passed only in exercise of jurisdiction u/s 129E of the Customs Act, 1962 dispensing with requirement of depositing duty and penalty but also in exercise of its inherent powers as it stayed the order dated 14 February, 2013 of the Commissioner of Customs in appeal before it. The order dated 27 January, 2014 which is impugned before us is not an order passed under proviso to Section 129 of the Customs Act, 1962 but is an order passed by the Tribunal in its inherent jurisdiction in exercise of it powers as an appellate authority in a pending appeal.

6. In the above view of the matter the question of law as proposed by the Revenue is not a substantial question of law and therefore, we see no reason to entertain the present appeal.

7. Accordingly the appeal is dismissed with Order as to costs. We trust that now the Revenue would expeditiously implement the order of the Tribunal.

