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(2015) 03 AHC CK 0181

In the Allahabad High Court

Case No : Customs Appeal Defective No. 93 of 2015

Commissioner of Customs, Noida APPELLANT

Vs

Dhampur Sugar Mills RESPONDENT

Date of Decision : 23-03-2015

Acts Referred:
Customs Act, 1962 — Section 114(i), 130
Limitation Act, 1963 — Section 5

Citation : (2015) 323 ELT 352

Hon'ble Judges : Sudhir Agarwal, J;Anil Kumar Sharma, J

Bench : Division Bench

Advocate : Ramesh Chandra Shuka, Standing Counsel, for the Appellant; Nishant Misra, Advocates for the Respondent

Judgement

1. This is an appeal at the instance of the Revenue under Section 130 of Customs Act, 1962 against the order of Tribunal dated 4-7-2014 passed in Customs Appeal Nos. 60023 and 60024 of 2013 CU (DB). This appeal has been reported being time barred by 55 days. Sri Nishant Misra, Advocate, has put in appearance on behalf of respondents. He stated at bar that he does not propose to file a written objection and the Court may examine the genuineness of explanation given by the appellant for filing the appeal beyond time and pass appropriate order. The learned counsel for appellant submits that the delay for not filing the appeal within time has been satisfactorily explained.

2. The application under Section 5 of Limitation Act is allowed. The delay in filing the appeal is condoned. Let the appeal be registered with regular number and the old number shall also continue to be shown in bracket for finding out details of case, whenever required by parties with reference to either of the two numbers.

3. By means of the impugned order, the Tribunal has reduced the quantum of penalty imposed upon the respondent Nos. 1 and 2 from Rs. 1 Crore to Rs. 10 Lakhs under Section 114(i), 114AA of Customs Act, 1962 and from Rs. 10 Lakhs

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to Rs. 50,000/- respectively.

4. From perusal of the record, it is found that while reducing the quantum of the penalty imposed upon the respondents No. 1, the Tribunal has not only considered the quantum of the sugar which was exported, but also the various factors including the profitability which could have been made by utilizing the import of raw-sugar and looking to these aspects of matter, the Tribunal has taken an appropriate view of the matter to reduce the quantum and impose the penalty of Rs. 10 Lakhs each under Sections 114(i), 114AA of Customs Act, 1962. Similarly, so far as the quantum of penalty imposed on Sri Mukul Sharma, respondent No. 2, is concerned, it did not find favour with the Tribunal being highly excessive and the Tribunal has rightly taken a lenient view and reduced it to Rs. 50,000/- payable by the respondent No. 2. It is also pertinent to mention here that though in para 4.5 of the Tribunal''s order the respondent No. 2 is mentioned as Mukul Sharma, but in the operative portion it has been transcribed as Mukesh Sharma, about which the learned counsel for the parties stated at bar that correct official is Mukul Sharma, General Manager of the respondent No. 1 company.

5. In view of the above discussion, the Court finds that the quantum of penalty imposed by the Tribunal is the pure question of fact and it does not raise any substantial question of law warranting interference by this Court in the matter. The appeal is accordingly hereby dismissed.

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