(2014) 11 CAL CK 0126

In the Calcutta High Court

Case No : APO. T. No. 305 of 2014, G.A. Nos. 1884-1885 of 2014 and W.P. No. 951 of 2013

Commissioner of Customs (Preventive) APPELLANT

Vs

Ahsan Waris RESPONDENT

Date of Decision : 19-11-2014

Acts Referred:

Citation : (2017) 345 ELT 86

Hon'ble Judges : Soumitra Pal and Arindam Sinha, JJ.

Bench : Division Bench

Advocate : Shri R. Bharadwaj and K.K. Maiti, Advocates, for the Appellant; Shri N.K. Chowdhury, Arijit Chakraborty, Nilotpal Chowdhury and Debaditya Banerjee, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

G.A. No. 1884 of 2014 is the application for condonation of delay in preferring the appeal. Causes shown having been found sufficient, the application for condonation of delay is allowed.

2. This appeal has been preferred by the Customs Department against the order dated 5th March, 2014 passed in WP No. 951 of 2013 (Ahsan Waris v. Commissioner of Customs (Preventive) & Ors.) [2014 (305) E.L.T. 78 (Cal.)], whereby the authorities have been directed to pay the petitioner the differential amount between the assessed value of the goods at the time of seizure being Rs. 7,75,792/- and the already refunded sum of Rs. 2,28,010/-.

3. Mr. Bharadwaj, learned Advocate on behalf of the Customs Authorities, argued since the goods were perishable goods and after confiscation the goods became the property of the Central Government as vested under Section 126 of the Customs Act, 1962, the authority concerned had no other option, but to sell the same at the price of Rs. 2,28,010/- which was refunded to the petitioner. He submitted the sale was duly made on 15th March, 2004 in a manner which

subsequently came to be provided for by the circular dated 20th February, 2006 issued by the Government of India, Ministry of Finance, Department of Revenue, copy of which he has handed up. He submits applying depreciation on the value of the goods at the time of seizure, the petitioner would be entitled to the value of the sale proceeds thereof and nothing more on having the order of confiscation set aside in its appeal before the Tribunal.

4. It appears from the order impugned the question whether or not the sale was made contrary to the provisions or without any reasonable explanation was not gone into. The writ petitioner has not preferred any cross-objection against such finding. Therefore, the only question before us is as to whether the learned Single Judge was correct in directing the differential payment.

5. On the question for consideration before us, we find the same stands answered by the decisions referred to by the learned Single Judge in the impugned judgment. The appellant has not been able to come up with any authority contradicting the proposition of law enunciated by those judgments delivered by the Division Benches of the Delhi High Court in Shilp Impex v. Union of India; reported in 2001 (128) E.L.T. 54 (Del.), and Kailash Ribbbon Factory Ltd. v. Commr. of Cus. & C. Ex., New Delhi; 2002 (143) E.L.T. 60 (Del.) and the Punjab and Haryana High Court in Commissioner of Customs, Amritsar v. Harinder Singh; reported in 2008 (221) E.L.T. 203 (P & H). We find all the three matters travelled to the Hon''ble Supreme Court of India which by its order dated 18th January, 2002 [2002 (140) E.L.T. 3 (S.C.)] in Shilps Impex v. Union of India recorded the acceptance of the learned Additional Solicitor General on the part of the department that some money had already been paid to the petitioner and the balance amount would be paid. The Special Leave Petitions preferred against the judgment in Kailash Ribbon Factory Ltd. (supra) and in Commissioner of Customs, Amritsar (supra) were dismissed respectively on 27th September, 2004 [2004 (174) E.L.T. A130 (S.C.)] and 4th April, 2008 [2008 (227) E.L.T. A31 (S.C.)].

6. Mr. Chakraborty, learned Advocate appearing on behalf of the respondent also relied on another decision of the Hon''ble Supreme Court delivered in the case of Northern Plastics Ltd. v. Collector of Customs and Central Excise : 1999 (113) E.L.T. 3 (S.C.) in which the said Court in similar facts and circumstances held the applicant therein who had been deprived of the use of the goods that had been sold was entitled to the declared value thereof at the time it sought import of the same for home consumption.

7. We do not find any error on the part of the learned Single Judge in relying on the said decisions and coming to the finding as recorded in the impugned order. We note the goods were sold in the time after the order of Commissioner (Appeals) but before expiry of the statutory period within which appeal could be preferred therefrom to the Tribunal by the petitioner as recorded in the impugned order.

8. In the aforesaid circumstances, we find no reason to interfere with the order passed by the learned Single Judge. The direction in the impugned order stands confirmed to be complied with by the appellant within 12 (twelve) weeks from the date of communication of our order upon the appellant by the respondent failing which the sum will carry interest at the rate of 9% per annum till the date of payment.

9. The application and the appeal are dismissed.

10. Urgent certified copy of this order be supplied to the parties, if applied for, upon compliance of all requisite formalities.