(2016) 07 DEL CK 0114

In the Delhi High Court

Case No : Writ Petition (C) No. 5465 of 2016 and C.M. No. 22781 of 2016 (Stay)

Dugar Overseas Pvt. Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 25-07-2016

Acts Referred:

Citation : (2016) 339 ELT 354

Hon'ble Judges : Dr. S. Muralidhar and Najmi Waziri, JJ.

Bench : Division Bench

Advocate : Dr. Prabhat Kumar with S/Shri Pradeep Jain, Ms. A. Suresh and Rahul Raheja, Advocates, for the Petitioners; S/Shri Atul Batra with Kundan Kumar Mishra, Sameer Jain and Satish Aggarwala, Advocates, for the Respondents

Final Decision : Disposed Off

Judgement

1. The challenge in this petition is to the constitutional validity of Sections 27A and 28AA of the Customs Act 1962, and the Notifications No. 75/2003-Cus(NT), dated 12-9-2003, 18/2011-Cus(NT), dated 1-3-2011 (w.e.f. 1-4-2011) and 33/2016-Cus(NT), dated 1-3-2016 (w.e.f. 1-4-2016). The central issue is whether the respondent is justified in adopting a discriminatory approach in the matter of interest, which is compensatory in character by awarding an assessee in effect interest at only 6% per annum on the delayed refunds while charging an assessee interest at present at 15% per annum on late payment of duty.

2. Learned counsel for the petitioner states that he is not pressing the ground raised concerning jurisdiction of the respondent Directorate of Revenue Intelligence (DRI) to issue a demand for duty and interest prior to 8th April, 2011.

3. Learned counsel for the Respondent No. 2/Customs Department however raises a preliminary objection regarding maintainability of the petition by pointing out that the adjudication arising out of the show cause notice ("SCN") dated

16th April 2014 has been now consolidated in the office of the Commissioner of Customs, Nhava Sheva, Uran. However, it is pointed out by Dr. Prabhat Kumar, learned counsel for the petitioner, that as is evident in para 16 of the impugned SCN, one of the adjudicating authorities mentioned in the SCN was the Commissioner of Customs, ICD, Tughlakabad, New Delhi. It is only subsequently that the adjudication has been consolidated in the office of the Commissioner of Customs, Nhava Sheva, Uran. He accordingly points out that a part of the cause of action did arise within the jurisdiction of this Court.

4. The Court, accordingly, negatives the preliminary objection raised by the Respondent No. 2.

5. Notice. Mr. Atul Batra, Mr. Sameer Jain and Mr. Satish Aggarwala, learned counsel accept notice for Respondent Nos. 1/UOI, 2/Customs and 3/DRI respectively. Replies be filed within four weeks. Rejoinder, if any, be filed before the next date.

6. List on 28th November, 2016.

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7. It is made clear that there is no stay of the adjudication of the SCN dated 16th April 2014, which will proceed in accordance with law.

8. The final order passed in the adjudication proceedings, limited to the extent of the issue of interest, will be subject to the outcome of the present petition.

9. The application is disposed of.