(2014) 01 CAL CK 0026

In the Calcutta High Court

Case No : W.P. No. 1119 of 2013

Durgesh Merchandise P. Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 08-01-2014

Acts Referred:
Customs Act, 1962 — Section 17

Citation : (2014) 305 ELT 439

Hon'ble Judges : Harish Tandon, J

Bench : Single Bench

Advocate : R.K. Chowdhury, Shekhar B. Saraf and Shampa Sarkar, Advocate for the Appellant; Roy, Advocate for the Respondent

Judgement

Harish Tandon, J.—The short point canvassed by the writ petitioner in this, writ petition is that despite an application made before the Assessing Officer, he did not pass the speaking order within the statutory period. Admittedly, the self-assessment was disputed by the Assessing Officer under sub-section (4) of Section 17 of the Customs Act, 1962. The reassessment is made disputing the correctness of the self-assessment by the Assessing Officer but did not pass any speaking order.

2. My attention is drawn to the provision contained under sub-section (5) of Section 17 of the Customs Act, 1962 which provides for speaking order on re-assessment within fifteen days from the date of re-assessment of the Bill of Entry or the shipping bill as the case may be.

3. According to the petitioner, such statutory duty is to be discharged by the Assessing Officer if occasion so arises and the said authority cannot shirk it responsibility by keeping an application pending.

4. Mr. Roy, learned Advocate for the respondent authorities, firstly, submits that an application was made beyond fifteen days from the date of reassessment.

5. My endeavor has failed to find out from the language employed under sub-

section (5) of Section 17 of the said Act that an application is required to be made by an importer or the exporter but on reading the language as engrafted therein it appears to me that it is a statutory duty cast upon the Assessing Officer to pass speaking order on the re-assessment within fifteen days from the date of re-assessment of the Bill of Entry or the shipping bill which is not dependent upon an application to be taken out by the importer or the exporter.

6. The legislature has imposed duty upon the Assessing Officer to pass speaking order if an approach is made by the importer or the exporter.

7. The aforesaid proposition can be fortified from the Division Bench judgment of this Court rendered in Kothari Metals Ltd. v. Union of India reported in 2011 (274) E.L.T. 488 (Cal.) wherein it is held, inter alia, as follows:

On a plain reading of the aforesaid sub-section, it appears that a duty is cast upon the proper officer to pass a speaking order within 15 days from the date of assessment of the bill of entry or the shipping bill, except the cases where the importer confirms his acceptance of the assessment in writing.

8. The only exception which is carved out in the said sub-section is that the authority is not obliged to pass speaking order if the importer or the exporter confirms his acceptance of the said re-assessment in writing.

9. According to Mr. Roy, if the reassessed duty has been deposited by the importer or the exporter that implies the acceptance of the said order and therefore, the Assessing Officer is not under any obligation to pass speaking order. Such submission cannot be accepted for a simple reason that the legislature was conscious of such situation and incorporated the word "in writing". Such confirmation relating to an acceptance must be "in writing" and cannot be obliterated because of the conduct of the exporter or the importer having chosen to deposit the reassessed duty. Any other interpretation in my considered view, would frustrate the intent and/or the object of the legislature incorporating the words within the statutes. It is to be reminded that the legislature never used any words unnecessarily and, therefore, if there was a conscious intentment to incorporate the words "in writing" for confirmation of the acceptance of the reassessment, the same is to be followed in its true spirit. If the thing is required to be followed in a particular manner, it is to be done in such a manner and not otherwise.

10. In view of the above findings, this Court finds that the Assessing Officer cannot sit idle and decline to discharge the statutory duty as provided in sub-section (5) of Section 17 of the Customs Act, 1962. The Assessing Officer, the respondent No. 3, is hereby directed to pass speaking order within fifteen days from the date of communication of this order and shall communicate the said order to the petitioner within a week thereafter.

11. For abundant precaution it is hereby recorded that this order shall not be construed to have been made on the merit of the re-assessment and the said

authority shall be free to pass speaking order without being influenced by any observation. The writ petition is disposed of. No costs.

