(2011) 01 CAL CK 0077

In the Calcutta High Court

Case No : Writ Petition No. 1593 of 2010

Enterprise International Ltd. APPELLANT

Vs

Commissioner of Customs (Port) RESPONDENT

Date of Decision : 20-01-2011

Acts Referred:

Customs Act, 1962 — Section 129EE

Citation : (2012) 281 ELT 47

Hon'ble Judges : Indira Banerjee, J

Bench : Single Bench

Advocate : Sudhir Kr. Meheta, for the Appellant;Tapash Kr. Hazra, for the Respondent

Judgement

Indira Banerjee, J.—In course of business the petitioners imported various grades of silk fabrics under 5 (five) bills of entry as specified in paragraph four of the writ petition. The respondent authorities disputed the valuation declared by the petitioners. The petitioners were assessed to higher duty. Pursuant to an interim order passed by a Single Bench of this Court on December 2, 2004 the goods in question were released upon furnishing bank guarantees securing the disputed duty.

2. On February 17, 2005 a show-cause notice was issued. The petitioner gave its reply to the show-cause notice.

3. On or about February 25, 2005 an adjudication order was passed enhancing the value of goods, as proposed in the show-cause notice. The Adjucating Authority imposed a fine of Rs. 4 (four) lacks and a penalty of Rs. 4 (four) lacks on the petitioners.

4. Being aggrieved the petitioners preferred an appeal before the Customs, Excise & Service Tax Appellate Tribunal, herein after referred to as "The Tribunal".

5. At the time of hearing of the appeal, the petitioners were required to pre-deposit Rs. 1.20 lacs, which the petitioners did. On July 28, 2010 [2010 2010

(259) ELT 629 the Tribunal allowed the appeal and accepted the value as declared by the petitioners. The respondents did not prefer any appeal from the order of the Tribunal. This is not in dispute. The order of the Tribunal has assumed finality.

6. The petitioners claim to have been demanding release of the bank guarantees and also refund of the amount pre-deposited in terms of the order of

the Tribunal. It is alleged that the respondent authorities are withholding release of the bank guarantees as well as refund of pre-deposit.

7. The decision of the Tribunal having assumed finality, is not open to the respondent authorities to either withhold release of the bank guarantees or to withhold refund of the sum of Rs. 1.20 lacks deposited pursuant to the order of the Tribunal.

8. The writ application is disposed of by directing the respondent authorities to forthwith release the bank guarantees and further to refund the deposit of Rs. 1.20 lacs along with interest in accordance with the provisions of Section 129EE of the Customs Act, 1962. The amount shall positively be refunded within 60 days from the date of communication of this order.

9. Affidavits not having been called for, the allegations in the writ petition shall be deemed not to have been admitted. Urgent certified copy of this order be supplied to the parties, if applied for, upon compliance of all requisite formalities.

