**(1999) 02 CAL CK 0022**

**In the Calcutta High Court**

**Case No :** Constitutional Writ Jurisdiction W.P. No. 2359 of 1996

HCL Office Automation and Others APPELLANT

Vs

Commissioner of Customs and Others RESPONDENT

**Date of Decision :** 01-02-1999

**Acts Referred:**

Constitution of India, 1950 — Article 14, 19, 21, 226
Customs Act, 1962 — Section 112, 129E

**Citation :** (1999) 1 CALLT 469 : (1999) 66 ECC 608 : (1999) 113 ELT 395

**Hon'ble Judges :** Yad Ram Meena, J

**Bench :** Single Bench

## Judgement

1. The Court : By this petition the petitioner has prayed that the impugned order dated 8th November 1994 be quashed and the aforesaid order should not be given effect.

2. The petitioner company was Incorporated under the Companies Act 1956 and it carries on business inter alia in the manufacture of photo copying machines. For the purpose of business the petitioner No. 1 imports components of photo copying machine and in the instant case petitioner Imported from M/s. Toshiba Corporation of Japan 1400 sets of components of photo copying machine during the period February 1991 to April 1991. For the purchase the quotation was furnished by M/s. Toshiba Corporation for the price of a single photo copying machine at Japanese Yen 3.20.000.

3. Originally photo copying machine sets were imported during June 1990 to August 1990. 400 sets of components. Petitioner again imported 1400 sets of photo copying machines during the period of March 1991 to May 1991. The valuation declared by the petitioner in respect of the imports was the same which was earlier considered by the Department in the order of the Collector of Customs dated 6th December 1991. In the instant case a show cause notice has been served on the petitioner. Collector of Customs, Sri B.P.Srivastava has passed the order on 15th November, 1991. It dropped the allegation as to

violation of the import licence provisions but enhanced the value of the goods and thereby difference in value comes to 9,84,402. Therefore, the petitioner is liable to pay the additional duty to the tune of Rs, 19,93,414/-. Against that order passed by Collector of Customs. Sri B.P. Srivastava petitioner preferred the petition in this court and this court by its order dated 16th June 1993 set aside the order of Collector of Customs, dated 15th November 1991. so far it relates to the valuation of the goods and remitted the matter back to the Collector of Customs with the direction to pass a fresh order, after giving the appellant a reasonable opportunity of being heard, within a period of three months from the date. After giving an opportunity to the petitioner Collector of Customs has passed a fresh order dated 26th April 1994 whereby he not only further enhanced the value of the goods but also Imposed the penalty of Rs.3,50,00,000/- u/s 112(a) of the Customs Act 1962. Against that order petitioner preferred the appeal before the Customs Excise & Gold (Control) Appellate Tribunal, Calcutta and also prayed that the condition of pre deposit as required u/s 129E be waived. By the Impugned order dated 8th November 1994 the Tribunal has directed the petitioner that if they pay a sum of Rs. 50,00,000/- within a period of four months from the date of order the condition of pre-deposit for filing of the appeal shall stand waived.

4. Being aggrieved, by that Impugned order of the Tribunal, petitioner preferred this petition. The learned counsel for the petitioner submits that against the order of Collector of Customs, Sri B.P. Srlvastava dated 15th November, 1991 petitioner preferred the petition and department has not challenged the finding of the Collector of Customs regarding the value of the goods which has been taken by the Collector of Customs.

5. When the matter was remitted back to the Collector of Customs in the second round in an order dated 26th April 1994 the Collector has not only enhanced the further value of goods than the value estimated by Collector of Customs In his order dated 15th November 1991,but has also imposed the penalty. Therefore, his submission is that when they have no grievance against the order of Collector of Customs dated 15th November 1991, the value adopted in that order cannot be enhanced, in the second round, by the Collector of Customs in an order dated 26th April 1994. The petitioner has already furnished the bank guarantee to the tune of Rs. 20,00,000/-to cover the additional duty on account of difference in the value estimated by Collector of Customs than the declared value. Therefore, there is no Justification of any further payment on account of subsequent order of the Collector of Customs dated 26th April. 1984.

6. Learned counsel for the respondent submits that when the order was set aside by this court vide its order dated 16th June 1993, the direction was that to pass a fresh order after hearing the petitioner, there was no restriction on the estimation of the value and after hearing the petitioner the value has been estimated and petitioner is liable to pay duty and penalty as directed in the order dated 26th April, 1994.

 

7. Heard the learned counsel for the parties. The admitted facts that after show cause notice the Collector of Customs has passed the order dated 15th November 1991 arid as per his order the petitioner is liable to pay additional Customs Duty to the tune of Rs. 19,93,414/- and for that the petitioner has already furnished the bank guarantee of Rs. 20,00,000/- and it is also admitted fact that the department has not preferred appeal against the order of Collector of Customs. Mr. Srlvastava, dated 15th November 1991. It is also pertinent to note that impugned order is dated 8th November 1994 but no effective steps have been taken for recovery of the Customs Duty and penalty in pursuance of the order dated 26th April. 1994. Thus even after expiry of four years no material has been shown that the department is serious in recovery of the duly and penalty in pursuance of the order dated 26th April 1994. Therefore, instead of pressing the petitioner to deposit of Rs. 50,00,000/-before the appeal is entertained, I would prefer that appeal be heard within two months and be disposed of on merits and whatever the Customs Duty and Penalty payable as per Tribunal determines, in the appeal, be recovered expeditiously.

8. In the result I am of the view that it is a fit case where the pre deposit condition for hearing of appeal, as provided u/s 129E. should be waived. Therefore, it is order that the appeal of the petitioner be heard without insisting on deposit of Rs. 50.00.000/- before hearing of the appeal and no unnecessary adjournments be allowed. If the petitioner prays for adjournments on unreasonable grounds this order shall stand vacated and It will be open to the department to recover the Customs Duty and Penalty In accordance with the provisions of the Act.

The petition stands disposed as stated above.

9. Petition disposed of

 