(2016) 09 CAL CK 0038

In the Calcutta High Court

Case No : Writ Petition No. 454 of 2012

Jai Balaji Industries Ltd. APPELLANT

Vs

Dy. Commissioner Of Customs (Group-IV) RESPONDENT

Date of Decision : 22-09-2016

Acts Referred:

Citation : (2016) 342 ELT 162

Hon'ble Judges : Debangsu Basak, J.

Bench : Single Bench

Advocate : S/Shri J.P. Khaitan, Senior Advocate, Agnibesh Sengupta, Siddhartha Das and C.S. Das, Advocates, for the Petitioner; S/Shri B.P. Banerjee and Somnath Ganguli, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Debangsu Basak, J. - The petitioner has assailed an order passed by Customs, Excise and Service Tax Appellate Tribunal dated March 15, 2012.

2. Learned Senior Advocate for the petitioner has submitted that, the Customs authorities were required to issue a notice under Section 28 of the Customs Act, 1962 prior to assessing the liability of the petitioner. In the present case, the Customs authorities did not do so. The Customs authorities has assessed the liability unilaterally and without notice. Although an appeal was filed, however, due to be circumstances beyond the control of the petitioner, the appeal provided under the Customs Act, 1962 was not preferred within the time period prescribed by the statute i.e. 60 days as also within the additional 30 days for which it can be condoned. The appeal was consequently dismissed. The Tribunal has also dismissed the appeal before it made at the behest of the petitioner on the same ground.

3. Learned Senior Advocate for the petitioner has relied upon AIR 1986 SC 85 (State of U.P. v. Md. Nooh) in support of the proposition that a writ of certiorari can be issued where there is an error, irregularity or illegality touching the

jurisdiction or procedure committed by an inferior Court or Tribunal of first instance and that existence of alternative remedy is no bar to the invocation of the provisions of Article 226 of the Constitution of India.

4. Learned Counsel for the Customs authorities has submitted that, the impugned order is appealable to the Division Bench under Section 130 of the Customs Act, 1962. Moreover since the petitioner did not take appropriate steps within the time period specified by statute to avail of the alternative statutory remedy, the writ Court should not interfere. He has further submitted that in the present case the decision cannot be said to be wholly without jurisdiction or that the so called infirmity is of such a nature that it warrants interference.

5. I have considered the rival contentions of the parties and the materials made available on record.

6. Admittedly the petitioner did not prefer an appeal against the order assessing the liability within the time prescribed under the Customs Act, 1962. It is not the case of the petitioner that the order of assessment was not made known to the petitioner.

7. Section 28 of the Act of 1962 requires a notice to be issued when any duty has not been levied or has been short-levied or erroneously refunded or any interest payable has not been paid, part paid or erroneously refunded. The alleged non-issuance of such notice under Section 28 itself does not vitiate the entire proceedings. It cannot be said that the assessing officer is acting without jurisdiction by not issuing an appropriate notice under Section 28 of the Act of 1962 in determining the liability of an assessee.

8. Be that as it may, the petitioner had ample opportunity to have such alleged irregularity corrected in a statutory appeal. The petitioner did not file the same within the time prescribed. A litigant who has allowed his alternative statutory remedy to go bye without affording any reasonable explanation for the same, should not be allowed to file a writ petition to assail such action.

9. In Md. Nooh (supra) it has been held that, where the Tribunal of the first instance has acted with patent lack of jurisdiction or that the procedure adopted is so patently illegal that it touches the jurisdiction or is so obtrusive that it leaves on its decision an indelible stamp of infirmity or vice which cannot be obliterated or cured on appeal or revision then a writ is maintainable. Such is not the fact scenario in the present case.

10. The petitioner had a right of appeal before the Division Bench under Section 130 of the Customs Act, 1962. Again there is no explanation as to why such appeal has not been preferred by the petitioner.

11. In such circumstances, I find no merit in the present writ petition. W.P. No. 454 of 2012 is dismissed. There will be no order as to costs.

