(1987) 04 CAL CK 0036

In the Calcutta High Court

Case No : Matter of 1987

Kanknarrah Company Limited APPELLANT

Vs

Customs, Excise and Gold (Control) Appellate Tribunal (Calcutta Bench) and Others RESPONDENT

Date of Decision : 23-04-1987

Acts Referred:

Citation : (1987) 30 ELT 906

Hon'ble Judges : Bhagabati Prasad Banerjee, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Bhagabati Prasad Banerjee, J.—In this particular case, the petitioner imported certain goods and cleared the goods without payment of duty by furnishing bond on condition of re-exporting as provided under Item No. 22A of the First Schedule to the Central Excises and Salt Act, 1944 for export under A.R. 4. Thereafter a show cause notice was issued to the Petitioner alleging that 5 years had passed but the Petitioner could not produce any document showing that the goods had been exported and as a result thereof, the petitioner was liable to pay the duty for the goods, which were imported duty free and as such liable for penalty also. The petitioner showed cause and the Additional Collector of Central Excise, Calcutta held that the petitioner failed to establish that the petitioner had been able to export 240 bales and accordingly, it was held that the petitioner was liable to pay the duty on the basis of the valuation of the goods-in-question.

2. It may be mentioned that the relevant provision under which the petitioner is entitled to get rebate in this behalf provides that the Collector must be satisfied that the goods had, in fact, been exported. But in the instant case, on the basis of the documents produced by the petitioner the authorities concerned were of the view that the goods could not be said to have been exported in the absence of the documentary proof in the shape of A.R. 4 endorsed by the Customs House. Against the said decision of the Additional Collector of Central Excise, Calcutta,

dated January 17, 1981 the petitioner preferred an appeal before the Customs, Excise and Gold (Control) Appellate Tribunal, Calcutta Bench, and the said Tribunal by its order dated April 26, 1983 rejected the appeal so far as the case of the petitioner for 240 bales was concerned.

3. In view of the concurrent finding made by both the authorities that the petitioner could not produce the relevant documents to establish that the goods-in-question had been exported and the petitioner was entitled to the benefit under the Rules, in my view, the Writ Court cannot decide the question of fact whether the goods had really been exported or not. It is a matter to be decided by the authorities concerned on being satisfied on the basis of the evidence required to be produced and when it appears that the authorities concerned were satisfied that the goods were not exported, this Court, in the facts and circumstances of the case, is unable to give any relief to the petitioner.

4. Accordingly, the writ petition is rejected and dismissed.