(2012) 08 KAR CK 0157

In the Karnataka High Court

Case No : Writ Petition No. 12720 of 2012 (T-TAR)

M/s. Colloids Impex (P) Limited No. APPELLANT

Vs

The Commissioner of Customs Bangalore Zone Central Revenue Buildings Queens Road Bangalore - 560001 RESPONDENT

Date of Decision : 07-08-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Customs Act, 1962 — Section 129 A (1) (a)

Citation : (2012) 08 KAR CK 0157

Hon'ble Judges : H.G. Ramesh, J

Bench : Single Bench

Advocate : Jayakumar S. Patil, for M/s. Guha Associates, for the Appellant; P.S. Dinesh Kumar, CGSC, for the Respondent

Judgement

H.G. Ramesh, J.—This Writ Petition is directed against the order dated 30.12.2011 (Annexure-H) passed by the Commissioner of Customs, Bangalore. I have heard Sri Jayakumar S. Patil, learned Senior Counsel appearing for the petitioner and Sri P.S. Dinesh Kumar, learned Senior Standing Counsel appearing for the respondent.

2. Sri Jayakumar S. Patil, learned Senior Counsel appearing for the petitioner submitted that though the petitioner has a statutory remedy of appeal against the impugned order under Sec. 129A(1)(a) of the Customs Act, 1962 (''the Act'' for short), the petitioner has filed this Writ Petition invoking the extraordinary jurisdiction of this Court under Articles 226 & 227 of the Constitution of India as the impugned order is violative of the principles of natural justice. He specifically referred to para 25 as also para 31 of the impugned order and submitted that the Commissioner of Customs has relied on certain materials to hold against the petitioner without furnishing the said materials to the petitioner. Therefore, he submitted that the impugned order is violative of the principles of natural justice.

3. Sri P.S. Dinesh Kumar, learned Senior Central Government Standing Counsel

submitted that the impugned order is appealable and therefore, it is appropriate for the petitioner to avail of the statutory remedy of appeal in accordance with law. He referred to para 53 of the impugned order and submitted that the petitioner did not describe the goods correctly and had played fraud by misstating and camouflaging the description of the goods. Para 53 of the impugned order reads as follows:

53. The noticee had all along camouflaged the description to mislead assessing officers. He has wrongly utilized the technical knowledge of the products to evade payment of duty. He, being in the field, is in the knowledge of the noticee that the goods are by themselves not Prepared Culture Media, he camouflaged the description to fit into the CTH with an intention to evade higher duty chargeable on Agar and other Primary products imported by him. Accordingly, I find that, if the Noticee had not camouflaged the goods, the issue would have been detected by assessing officers. I find that because of camouflaging and mis-statement of description the fraud escaped the notice of assessing officers.

4. It is true that if an order is violative of the principles of natural justice, it is open to the party aggrieved to assail the order by invoking the writ jurisdiction of the High Court under Article 226 of the Constitution of India. However, interference depends on the facts of the case.

5. By the impugned order, the adjudicating authority, namely the Commissioner of Customs, on a detailed consideration of the matter, has found that there was mis-classification of the goods imported resulting in short payment of duty to the extent of 20% of the BCD. In my opinion, this is not an appropriate case warranting interference under the extraordinary jurisdiction of this Court. The petitioner has a statutory remedy of appeal under the Act and it is open to the petitioner to urge all the contentions. In this context, it is relevant to refer to the following observations of the Hon''ble Supreme Court in United Bank of India Vs. Satyawati Tondon and Others,

17. ...Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc., the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

6. In the result, I decline to entertain this Writ Petition with liberty to the petitioner to avail of the statutory remedy of appeal under Sec. 129A(1)(a) of the Act in accordance with law. At this stage, Sri Jayakumar S. Patil, learned Senior Counsel submits that the petitioner will avail of the statutory remedy of appeal within four weeks from today and in the interest of justice, the appellate Tribunal may be directed to consider the appeal of the petitioner on merits without reference to the limitation. As the petitioner was bonafide prosecuting this Writ Petition, I deem it appropriate to direct the appellate Tribunal, namely CESTAT to consider the appeal on merits without reference to the limitation, if the appeal is filed in accordance with law within four weeks from today. All contentions of both the parties are kept open.

Petition disposed of.

