(2022) 09 DEL CK 0115

In the Delhi High Court

Case No : Civil Writ Petition No. 13828 Of 2021

M/S Meenakshi International APPELLANT

Vs

Principal Commissioner Of Customs & Ors. RESPONDENT

Date of Decision : 16-09-2022

Acts Referred:

Special Economic Zones Rules, 2006 — Rule 34
Customs Act, 1962 — Section 28, 28AB, 111, 111(j), 111(o), 112, 115, 125

Citation : (2022) 09 DEL CK 0115

Hon'ble Judges : Rajiv Shakdher, J;Tara Vitasta Ganju, J

Bench : Division Bench

Advocate : Pradeep Jain, Aditya Singla, Adhishwar Suri

Final Decision : Disposed Of

Judgement

Rajiv Shakdher, J

1. The substantive prayer made in the writ petition reads as follows:

"(i) To issue a writ of mandamus order direction thereby directing the respondent to return/releaseback the seized gold jewellery weighing 2294.840 gm back to the petitioner in compliance of Final order dated 16.11.2016 passed by the CESTAT, New Delhi in Custom Appeal No. 175/2011."

2. As is evident from the extract of the prayer, the petitioner seeks, in effect, compliance of the final order dated 16.11.2016, passed by the Customs, Excise and Service Tax Appellate Tribunal [in short "the Tribunal"].

3. On 05.04.2022, when the matter was heard, it was recorded by the coordinate Benchof this Court (something which is not disputed by the respondents/ revenue), that against the order of the Tribunal, the respondents/revenue had preferred an appeal before the Allahabad High Court.

3.1. The Allahabad High Court, however, dismissed the appeal, on account of the tax effect being below the prescribed monetary limit.

3.2. It had also been observed, via the very same order, that an application for review hadbeen preferred in the Allahabad High Court, along with an application for condonation of delay.

3.3. It appears that the said review application has not been listed for adjudication before the Allahabad High Court.

4. According to us, the onus to get the review application listed before the Allahabad High Court,fell squarelyon the respondents/revenue. However, despite opportunities having been granted for this purpose, the respondents/revenue have not taken the necessary steps, in that behalf.

5. The record shows that an adjudication order was passed on 30.04.2010 when the following operative directions were issued qua the petitioner:

"(a) I confirm the demand of Customs duty amounting to Rs. 2,93,453/- involved on 1982.040 gms of duty free imported gold bars, removed from NSEZ to DTA in a clandestine manner and order to recover the duty along with interest from M/s Meenakshi International under the provisions of Section 28 read with Section 28AB of the Customs Act, 1962 and Rule 34 of the SEZ Rules, 2006;

(b) I confirm the demand of Customs Duty amounting to Rs. 3,35,795/- involved on the seized 2294.840 gms of duty free imported gold jewellary [sic: jewellery] removed from NSEZ to DTA in a clandestine manner and order to recover the duty along with interest from M/s Meenakshi International under the provisions of Section 28 read with Section 28AB of the Customs Act, 1962 and Rule 34 of the SEZ Rules, 2006:

(c) I order for confiscation of the seized goods i.e. 2294.840 grams of gold jewellery valued at Rs. 29,44,823/- under Section 111 (j) and 111 (o) of the Customs Act, 1962, however, I give an option for redemption of the said seized goods subject to payment of redemption fine of Rs. 7,50,000/- under Section 125 of Customs Act, 1962.

(d) I order for confiscation of the seized vehicle Toyota Corolla No. DL4CAE0322 valued at Rs. 4,00,000/- under Section 115 of the Customs Act, 1962; however, I give an option for redemption of the said seized vehicle subject payment of redemption fine of Rs. 1,00,000/- under Section 115 of Customs Act, 1962.

(e) I impose penalty of Rs. 50,000/- on M/s Meenakshi International, 163, NSEZ, Noida, U.P. (Noticee 1); of Rs. 50,000/- on Shri Neeraj Rastogi, 2459/10, Bedan Pura, Karol Bagh, Delhi (Noticee 3); and of Rs. 50,000/- on Shri Rafiqul Islam @ Foju @ Goju, House No. 4242, Gali no. 62, Regar Pura, Karol Bagh, New Delhi (Noticee 4) under Section 112 of the Customs Act, 1962, for their acts of omission and commission rendering the seized gold jewellery weighing 2294.840 grams liable for confiscation under Section 111 of the Customs Act, 1962."

5.1. Being aggrieved, the petitioner preferred an appeal. The Commissioner of Customs (Appeals), viathe order dated 31.01.2011, largely varied the order of adjudication. The operative directions issued by the Commissioner ofCustoms (Appeals) are set forth hereafter:

“6.2 I find that there is nothing wrong in the imports and exports. Further, I find that the allegations per se are contradictory on facts. It is noted that the Department has accepted the disclosures made by the said persons vide their respective statements duly corroborated by actual imports, exports and exchange of gold bar with jewellery, both in the first instance of exchanging gold bars with jewellery and in the second instance of referred exported jewellery re-imported with new jewellery and that the said jewellery in both the cases was actually exported as is evident from the impugned SCN. Moreover, the search at the factory premises of the Appellant did not disclose any short comings on the stock portion of inputs and outputs; thus certifying the maintenance of records pertaining to the disputed transactions to be correct. Thus, it is not the case that the Appellant had cleared the goods for export irregularly and that such exports are not out of the stock received and maintained at Appellant's firm.

xxx xxx xxx

7. Regarding the issue of confiscation, with particular reference to Para 6 of this order it is materially evident that the seized goods were found without relevant / licit documents by Shri Neeraj Rastogi in his vehicle in the notified area of SEZ, Noida as per the proceedings drawn before the independent witnesses vide the referred Panchnama on the said dates. He also did not dispute such facts about the movement of his vehicle in SEZ on specified date, physical availability of the vehicle and the seized jewellery from the said vehicle. The Appellant also fairly conceded about the movement of such jewellery and handing over the same to him through Sh. Golam Mortaja and 'Rafiquf Islam without requisite documents, while accepting the ownership of the said jewellery. Hence, the Order related to confiscation stands justified to the extent of the seized goods i.e. 2294,840 grams of gold jewellery valued at Rs.29,44,823/- under Section 111 U) and 11 l(o)of the Customs Act, 1962. However, I am of the view by considering the circumstances prevailing in the instant case and duty involvement of R. 3,35,795/- that Rs. 3,75,000/- only as redemption fine under section 125 of the Act ibid would meet the interest of the justice.”

[Emphasis is ours.]

5.2. Being aggrieved, the petitioner filed an appeal with the Tribunal. The Tribunal reversed the order of the Commissioner of Customs (Appeals).

5.3. The Tribunal, in the operative part of its order, recorded the following:

“7. Considering the observations of Hon’ble Gujarat High Court and CESTAT quoted above, we find that customs did not have jurisdiction within Special Economic Zone established under SEZ scheme by the Ministry of Commerce, Government of India and present proceedings initiated by the customs were beyond jurisdiction. Therefore, impugned order is without proper authority of law and is hereby set-aside. Appeal is allowed with consequential relief to the appellant.”

[Emphasis is ours.]

6. The position, as it stands today, is that the Tribunal has reversed the order of the Commissioner of Customs (Appeals), on the ground that the Customs department was not invested with requisite jurisdiction, albeit, within the Special Economic Zone established under SEZ Scheme framed by the Ministry of Commerce, Government of India.

6.1. It is on this score, that the Tribunal concluded that the proceedings initiated against the petitioner were beyond thejurisdiction of the Customs department.

6.2. Accordingly, the Tribunal set aside the impugned order and allowed the appeal, with consequential relief.

7. Given the foregoing, in our view, the best way forward would be that the respondents/revenue should be directed to comply with the order passed by the Tribunal.

7.1. It is ordered accordingly.

7.2. However, in order to secure the interests of the respondents/revenue, the petitioner is directed to furnish a personal bond.

7.3. As per the consent of the counsel for the parties,a personal bond amounting to Rs.8,00,000/-, which is a round figure, based on the order passed by the Commissioner of Customs (Appeals) will be furnished by the petitioner, within a period of one week, from the date of receipt of a copy of the judgment passed today.

8. In case, the petitioner makes a representation for issuance of a detention certificate, the same will be considered, by the concerned authority.

9. Once the bond is furnished to the respondents/revenue, the concerned authority will release the subject gold, at the earliest, though, not later than two weeks from the date of receipt of the personal bond executed on behalf of the petitioner.

10. The writ petition is disposed of, in the aforesaid terms.

11. Parties will act, based on the digitally signed copy of the judgment.