

(2001) 08 CAL CK 0061
In the Calcutta High Court
Case No : A.P.O. No. 394 of 1993

Sanjay Dhanuka

APPELLANT

Vs

Collector of Customs

RESPONDENT

Date of Decision : 28-08-2001

Acts Referred:

Customs Act, 1962 — Section 59, 61, 61(2)

Citation : (2001) 77 ECC 619 : (2001) 133 ELT 263

Hon'ble Judges : Tarun Chatterjee, J;Asit Kumar Bisi, J

Bench : Division Bench

Advocate : Bhaskar Sen, Hasmukh Kundalia, P.K. Das and Vipul Kundalia, for the Appellant;Ashutosh Law and S. Sengupta, for the Respondent

Judgement

1. This appeal is preferred against the judgment and/or order dated 11th May, 1993 passed by a learned Judge of this Court in Matter No. 1148 of 1993 moved by the writ petitioner Sanjay Dhanuka. The subject matter of controversy before the Writ Court was the liability of the petitioner to pay interest on goods warehoused by the petitioner u/s 59 of the Customs Act. The learned Judge in a detailed judgment however held that the writ petitioner was not entitled to any relief excepting that a direction on the customs authorities to release the balance LDPE Granules to the writ petitioner/appellant subject to the appellant making payment of interest at the rates of duties as applicable from time to time after the expiry of the statutory period u/s 61 under the unamended provisions of Section 61(2) of the Customs Acts.

2. This question however is no longer res integra in view of the recent decision of the Supreme Court in the case of Pratibha Processors v. Union of India, reported in 1996 (17) RLT 333 (SC) and in the case of Commissioner of Customs, Chennai Vs. Jayathi Krishna and Co., . In the aforesaid two cases it was held by the Supreme Court that the importers-assessees are not liable to pay interest in respect of warehoused goods, though at the time of clearance the goods were exempted from payment of duty.

3. That being the position in law now, we have no other alternative but to set aside the judgment of the trial Court and hold that the appellants are not liable to pay any interest in respect of warehoused goods.

4. Accordingly, the judgment and/or order of the trial Court is set aside and the appeal is allowed. There will be no order as to costs.

5. At the time of disposal of an application for grant of interim relief of 6th December, 1993, a Division Bench of this Court passed the following directions :-

"(a) The appellant shall deposit a sum of Rs. 6 lakhs with his Advocate-on-record who shall invest the same in a short term fixed deposit of any nationalised bank; he shall hold the same free from lien subject to further order of this Court.

(b) The appellant shall also furnish P.D. Bond in the sum of Rs. 8 lakhs.

(c) Upon the intimation of the opening of fixed deposit and upon furnishing of the bond within 48 hours therefrom the goods shall be released by the Customs Authorities."

6. So far as (b) and (c) parts are concerned, Mr. Sen learned Counsel appearing for the appellant submits that no direction need be made at this stage. So far as (a) is concerned, we are informed by Mr. Sen that a fixed deposit amounting to Rs. 6 lakhs only is lying with the learned Advocate on record Mr. Hashmukh, which may be handed over to the appellant by him within a week from this date and Tax Deducted at Source (IDS) also need not be deducted out of the said amount.

7. Considering the facts and circumstances of this case and length of time for which the amount was kept with the Receiver, we are of the view that Rs. 10,000/- should be fixed as remuneration of the Receiver and the said amount should be paid by the appellant.

8. All parties are to act on a signed xerox copy of this Dictated Order upon usual undertaking.