(1990) 02 CAL CK 0011

In the Calcutta High Court

Case No : Matter No. 3057 of 1989

Satya Vijay Exports (P) Ltd. APPELLANT

Vs

Collector of Customs RESPONDENT

Date of Decision : 02-02-1990

Acts Referred:

Citation : (1990) 48 ELT 344

Hon'ble Judges : P.D. Desai, C.J;Shyamal Kumar Sen, J

Bench : Division Bench

Judgement

P.D. Desai, C.J.

1 The appeal is taken up for hearing by treating it as included in the day''s cause list. Filing of the Paper Book is dispensed with and the undertaking given in that behalf is discharged.

2. The following facts are not in dispute :-

3. The appellant (Writ Petitioner) imported two consignments of... the claiming them to be Polystyrene Hi 425 on September 15,1988 from Korea through Calcutta Port. On the same day he filed a bill of entry claiming that the goods in question were required to be classified under Heading 3903.19 of the Customs Tariff. On February 17, 1989 two notices were issued to the appellant by the Customs Authorities disputing the valuation and classification of the goods and directing that cause be shown why the goods should not be classified as Copolymers under Heading 3903.90 of Customs Tariff and charged duty accordingly. On June 12,1989 the appellant sent a composite reply to both the show cause notice reiterating that the goods were in fact Polystyrene and liable to be classified as such under Heading 3003.19 of the Customs Tariff. On July 13, 1989 an adjudication order was passed by the Addl. Asstt. Collr. of Customs holding inter alia, that the goods were liable to be classified as Copolymers under Heading No. 3903.90 of the Customs Tariff and also liable to be charged duty accordingly. No penalty was, however, imposed.

4. On September 15, 1989 the appellant moved the Writ Petition, out of which the present appeal arises, challenging the above order of adjudication. The Trial Court rejected the writ petition in limine holding, inter alia, that the dispute related to the classification of goods and the applicability of the relevant item of the Customs Tariff and that the appellant ought to have reported to the alternative machinery available under the Customs Act, 1962 for getting relief.

5. Hence the present appeal.

6. In our opinion, the Trial Court had full justification to relegate the appellant to the alternative remedy of appeal, since the question involved did not raise a point of initial jurisdiction but as to the classification under one or the other heading of the Customs Tariff and such a question falls for decision and is within the competence of the appropriate authorities to decide. No interference is, therefore, called for in appeal with the impugned decision of the Trial Court.

7. It is not in dispute that on the facts and in the circumstances of the case the appellate forum is the Central Excise and Gold Control Appellate Tribunal, hereinafter called "the Tribunal". The period of limitation for preferring the appeal has evidently expired since the appellant was prosecuting remedy in Writ jurisdiction. In view of the fact that he has been relegated to the alternative remedy of appeal, he would be entitled to condonation of delay in the preferment of appeal if he does so within four weeks from date in view of his having diligently prosecuted remedy by way of invoking Writ Jurisdiction. On behalf of the respondents it has been fairly staled that no objection to the entertainment of the appeal on the ground of limitation would be taken by and on their behalf. Indeed, on the facts and in the circumstances of the case, no such objection can be validly taken and the Tribunal will condone the delay in the preferment of appeal upon an application being made by the appellant in that behalf.

8. The appeal is, therefore, dismissed, subject, however, to the directions hereinabove given with respect to the preferment of appeal within the time indicated above and the condonation of delay in the event of an application in that behalf being made by the appellant before the Tribunal. It would also be open to the appellant to urge upon the Tribunal that the appeal be heard and disposed of as early as possible. The Tribunal would endeavour to dispose of the appeal as expeditiously as possible. Needless to say that the appellant would be entitled to raise all points in the appeal which he intends to prefer.

9. All parties to act on a signed copy of the operative part of this judgment on the usual undertaking.

