(2010) 07 GUJ CK 0045

In the Gujarat High Court

Case No : Special Civil Application No. 5633 of 1993

Trilokchand Family Trust, Ship Breakers APPELLANT

Vs

Superintendent, Central Excise and Others RESPONDENT

Date of Decision : 29-07-2010

Acts Referred:

Customs Act, 1962 — Section 128

Citation : (2010) 07 GUJ CK 0045

Hon'ble Judges : Harsha Devani, J;D.A. Mehta, J

Bench : Division Bench

Advocate : Y.M. Thakkar, for the Appellant; Amee Yajnik, for Respondents 1 - 3, for the Respondent

Judgement

H.N. Devani, J.—This petition has been filed with the following prayers:

Be pleased to issue a Writ of mandamus or a Writ in the nature of mandamus, or a Writ of prohibition or any other appropriate Writ, order or direction, quashing and setting the order dated 25-5-93 passed by respondent No. 1 at Annex. ''A'', and the respondents, their agents, servants, officers and servants, be directed to permit the petitioner, to break the Vessel-M.V. Lavaca, and to clear materials obtained by breaking the aforesaid Ship without payment of any additional customs duty and to treat such material as excise paid material for any purposes for which it is used in future.

Pending admission, hearing and final disposal of this petition, an interim stay, staying the operation, execution, and implementation of the order at Annex. ''A'' dated 25-5-93 passed by the respondent No. 1, may kindly be granted, and the respondents, their officers and agents and servants be directed to issue an amended Challan in place of Challan No. IMP-10/93/94, dated 25-5-93, after considering General Exemption No. 41, Notification No. 167 of 1986-CE, and Exemption Notification No. 74 of 93 (Cust).

Pending admission, hearing and final disposal of this petition, ad-interim injunction, directing the respondents, their agents, servant to permit the petitioner to break the Ship M.V. Lavaca and to clear materials obtained from breaking of such Ship, without insisting for any amount towards additional customs duty, at the rate of Rs. 1,000/- per L.D.T., and/or equivalent Excise duty.

Any other appropriate relief/s, as may be deemed fit in the interest of justice, may kindly be granted.

The cost of this petition may kindly be awarded.

2. Heard the learned advocates for the respective parties.

3. Vide order dated 16th June, 1993, this petition had been admitted and was directed to be heard with Special Civil Applications No. 5305/1993 and 5308/1993. In the said order, the Court has recorded that the petition was admitted mainly because of the reason that petitions involving same or similar issue being Special Civil Applications No. 5305/1993 and 5308/1993 had been admitted during the summer vacation by the High Court by a Division Bench of the Court.

4. Insofar as Special Civil Applications No. 5305/1993 and 5308/1993 are concerned, vide order dated 23rd July, 1993, the petitioners therein were permitted to withdraw the petition so as to enable the petitioners to prefer appeal to the competent authority u/s 128 of the Customs Act, 1962. The petitions were accordingly disposed of as withdrawn.

5. In the circumstances, this petition involving similar issue is also not required to be entertained as there is an alternative statutory remedy available under the Customs Act, 1962. The petition is accordingly rejected leaving it open to the petitioner to avail of the alternative statutory remedy. Rule is discharged with no order as to costs.