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Calcutta High Court

Case No: WP No. 385 of 2014

V.K. Udyog Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision: Aug. 13, 2014

Acts Referred:

- Customs Act, 1962 - Section 124, 28

Citation: (2014) 309 ELT 223

Hon'ble Judges: I.P. Mukerji, J

Bench: Single Bench

Advocate: A.K. Chowdhury, Advocate for the Appellant; S.B. Saraf, T.M. Siddiqui and K. Dey, Advocate for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Indra Prasanna Mukerji, J.
Mainly two points are raised by Mr. Chowdhury, learned Advocate for the petitioner. The first is that the Additional Director General of Revenue Intelligence did not have the power to issue the subject show cause notice. The second point is that in the facts and circumstances, it was not a case where duty had not been levied or had been short levied or erroneously refunded etc. under Section 28 of the Customs Act, 1962. So, according to Mr. Chowdhury, the heading of the show cause notice Section 28 read with Section 124 of the Customs Act, 1962 is bad in law and that the show cause notice is issued without jurisdiction.

2. To this, Mr. Saraf took me to the body of the show cause notice where there is reference, inter alia, to Section 111[O] of the Customs Act, 1962.

3. The duty had been levied according to Mr. Chowdhury and, thereafter, remitted as the petitioner was the beneficiary of import credit under a "Special Strategic Package for Status Holders". This package is in para 3.7.2.1 of the Foreign Trade

Policy 2003-2004. For achieving a certain value of exports above the corresponding value in the past which is termed as ''incremental growth in exports, duty free entitlement would be 10% of the incremental growth provided the minimum export turnover was Rs. 25 crores''. This entitlement was subject to conditions. According to the Revenue, there was breach of such condition and, hence, the writ petitioner''s goods were liable to confiscation. The writ petitioner and its Directors also became liable to pay duty, penalty etc.

4. On the prima facie case before me, I am not minded to stay the adjudication of the subject show cause notice. But it will be open for the writ petitioner to raise either of the above two objections before the Commissioner of Customs. Mr. Chowdhury submits that he should decide these objections as preliminary issues. In my opinion, it will be up to the adjudicating authority to decide, whether to resolve these issues as preliminary issues or to resolve them along with other issues involved in the show cause notice.

5. Should the authority decide to resolve the issues raised in this writ application along with the other issues, it should be in the form of a ruling. Adjudication of the show cause should be fixed on a subsequent date after the said ruling.

6. Nothing remains in this writ application. It is disposed of in terms of this order.

7. As affidavits were not invited allegations, if any, contained in the writ petition are deemed not to be admitted.

8. In view of this order, the Commissioner is to give an opportunity to the writ petitioner to file a reply to the show cause notice. Such reply may be filed by 30th September, 2014 peremptorily before the Commissioner.

9. All points are kept open before the Commissioner. Certified photocopy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.