

2020-TIOL-459-HC-KOL-CUS

IN THE HIGH COURT OF CALCUTTA

CUSTA No. 4 of 2016

GA No. 1828 of 2016

GAUTAM SILKS

Vs

UNION OF INDIA AND ORS

I P Mukerji & Md Nizamuddin, JJ

Dated: February 13, 2020

Appellant Rep by: Mr K K Thaker, Adv. Mr. A. Bagaria, Adv.

Respondent Rep by: Mr U S Bhattacharya, Adv. Mr. B. P. Banerjee, Adv.

Cus - The assessee is the transferee of duty free advance licenses held by the importer - The assessee is a *bona fide* purchaser for value of the license - During the relevant period, the Revenue was held guilty of suppression of facts, for which an SCN was issued u/s 28 of the Customs Act 1962 to the assessee-transferee, invoking extended period of limitation - Duty demand with interest and penalty was imposed in lieu of confiscation of goods - The Tribunal settled against the assessee, who then claimed that the law was settled in favor of the assessee, and that the Tribunal omitted to look into the relevant case laws.

Held: The issue at hand stands settled by the Tribunal in

Sumit Wool Processors and Ors. Versus Commissioner of Customs (Import)/(Export)

- The Tribunal should have followed this decision and ruled in favor of the assessee, but it did not do so - The law in this regard needs to be elucidated upon - Hence the appeal u/s 130 of the Customs Act is formally admitted - Matter listed for hearing on March 30, 2020: HC

Case deferred

JUDGEMENT

In this case, we are of the opinion that instead of framing the substantial questions of law in the form of questions, it could be better if the facts are narrated in brief from which the substantial questions of law would be apparent.

The appellant is the transferee of a duty free advance license/licenses held by the importer. Their case is that they are a bona fide purchaser for value of the licence. It appears that the importer was allegedly guilty of suppression of material facts for which a show cause-cum-demand notice under Section 28 of the Customs Act, 1962 was issued to the appellant transferee by the respondent authorities, invoking the longer period of limitation of five years, demanding duty, interest and penalty etc. in lieu of confiscation of goods. The case of the transferee is that they are not liable on the show cause notice.

It is submitted that this immunity is on the basis of a ruling of the CESTAT, West Zonal Bench, Mumbai in

Sumit Wool Processors and Ors. Versus Commissioner of Customs (Import)/(Export) decided on 18th August, 2015 = [2015-TIOL-2090-CESTAT-MUM.](#)

The tribunal in its impugned order dated 22nd December, 2015 ought to have followed that decision and rules in favour of the appellant but did not do so.

The law needs elucidation by this Court.

This appeal under Section 130 of the Customs Act, 1962 is formally admitted.

Since the respondent is represented by learned counsel, service and issuance of notice of the appeal are dispensed with.

Learned advocate-on-record for the appellant is directed to file an informal paper book by 16th March, 2020, serving a copy thereof upon the advocate-on-record for the respondent not later than seven days before the date of hearing of the appeal. All other formalities are dispensed with.

List this appeal (CUSTA No. 4 of 2016) on 30th March, 2020.

The stay application (GA No. 1828 of 2016) is, accordingly, disposed of.

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