

IN THE HIGH COURT OF BOMBAY

Customs Appeal No. 14 Of 2019

SOLANKI SHIPPING AGENCY

Vs

UNION OF INDIA AND ORS

M S Sanklecha & Sandeep K Shinde, JJ

Dated: July 03, 2019

Appellant Rep by: C Pooja Reddy I/b Vinit Dubey

Respondent Rep by: Mr Pradeep S Jetly

Cus - The issue at hand in the present appeal is whether the CESTAT can refer to statements recorded during investigations u/s 108 of the Customs Act, by holding the same to be admissible in proceedings under the CHALR 2004.

Held - The Revenue claimed that this Court in *The Commissioner of Customs (General) Vs. The West End Shipping Agency* had held such statements recorded u/s 108 of Customs Act to be inadmissible during proceedings under CHALR 2004 - Besides, the issue is kept open for consideration by this Court in the appeal of the Revenue in the cited case - Hence the present appeal requires consideration: HC

Case deferred

Case law cited:

Custom Appeal No. 19 of 2014 (The Commissioner of Customs (General) Vs. The West End Shipping Agency)... Para 3

JUDGEMENT

1. Heard.

2. The appeal is admitted on the following substantial question of law :-

(i) Whether the Tribunal was right in referring to the statements recorded during the course of investigations under Section 108 of the Customs Act, 1962 saying that the same are admissible in evidence under the proceedings held under the Custom House Agents Licensing Regulations, 2004?

3. Our attention was drawn to the order dated 5th January, 2015 of this Court passed in Custom Appeal No. 19 of 2014 (*The Commissioner of Customs (General) Vs. The West End Shipping Agency*) where the Revenue's appeal was admitted from an order of the Customs, Excise and Service Tax Appellate Tribunal (Tribunal) holding that statements made under Section 108 of the Customs Act, 1962 cannot be relied upon for proceedings under Customs House Agencies License Regulation, 2004

(CHALR). At the time of admission, the appellant Revenue had also taken out a Notice of Motion seeking stay of the order of the Tribunal which was a subject matter of challenge in West End Shipping Agency (supra). However, although the appeal was admitted the motion for stay of the order of the Tribunal was rejected.

4. The submission of the respondent that as the order passed by the Tribunal in West End Shipping Agency (supra) was inconceivable, it had to be admitted. Therefore, it is submitted that it cannot form the basis of admitting the present appeal. This submission of the respondent is not acceptable as if the Tribunal found the order in the West End Shipping Agency (supra) so inconceivable, then it would have stayed the same. In fact, on the contrary, we find that the issue is kept open for consideration by this Court in the appeal of the Revenue in respect of the West End Shipping Agency (supra). Thus, this appeal requires consideration.

5. Liberty to parties to apply for early hearing of the appeal.

6. Mr. Jetly, learned Counsel appearing for the respondents waives service.