

OD 4

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION
ORIGINAL SIDE

OCOT/9/2024
IA NO: GA/1/2024, GA/2/2024
COMMISSIONER OF CUSTOMS (PORT), KOLKATA
VS
M/S. VEDIKA METALS PVT. LTD.

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S SIVAGNANAM
-A N D-
HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Dated: November 27, 2024.

Appearance :
Mr. Bhaskar Prosad Banerjee, Adv.
Mr. Tapan Bhanja, Adv.
..for appellant
Mr. J.P. Khaitan, Sr. Adv.
Mr. Saurabh Bagaria, Adv.
Mr. Sayantan Chatterjee, Adv.
...for respondent

The Court : We have heard learned Counsel appearing for the parties.

It appears that there is a delay of 163 days in filing the cross-objection. The delay has been properly explained. Apart from that the appeal against the order passed by the Tribunal filed by the Department at the instance of the revenue has already been admitted by order dated 26th April, 2024. Therefore, the delay in filing the cross-objection is condoned.

The cross-objection is admitted on the following substantial questions of law:-

- i) Whether and in any event, Ferro Silicon mostly procured from the domestic market and in small quantity imported from Bhutan and exported after value addition by way of re-sizing, cleaning, grading and packaging were goods of Indian origin and there was no mis-declaration on the part of the respondent in that regard?
- ii) Whether the purported findings of the Tribunal that there was mis-declaration of the country of origin at the time of export or that the respondent had made any admission in that regard are arbitrary, unreasonable and perverse?
- iii) Whether the Tribunal was justified in law in holding that the goods exported by the respondent were liable to confiscation under section 113(i) of the Customs Act, 1962 when there was no mis-declaration of the country of origin and its purported findings in that behalf are arbitrary, unreasonable and perverse?
- iv) Whether and in any event, having regard to the provisions of section 28(2) of the Customs Act, 1962 any show cause notice could have been issued to the respondent in respect of duty, interest or penalty when it had paid the DEPB amount with interest in course of the investigation?
- v) Whether and in any event the show cause notice dated April 1, 2014 in respect of exports made during the period 2008 to 2012 was barred by limitation?

- vi) Whether and in any event, the notice dated April 1, 2014 was without jurisdiction since it was not issued under section 28AAA of the Customs Act, 1962?
- vii) Whether section 114 of the Customs Act, 1962 has any application and the respondent is liable for any penalty thereunder in the facts and circumstances of the instant case?
- viii) Whether section 114AA of the Customs Act, 1962 has any application and the respondent is liable for any penalty thereunder in the facts and circumstances of the instant case??
- ix) Whether and in any event the penalty imposed upon the respondent is disproportionate, expropriatory and unreasonable?

Stay application is formally disposed of but the same may be treated as informal paper book at the time of hearing.

Filing of informal paper book is dispensed with.

Since the respondent is represented by its learned Advocates, notice of cross appeal on them is waived.

List this cross appeal along with CUSTA/26/2024 after six weeks.

(T.S. SIVAGNANAM, CJ.)

(HIRANMAY BHATTACHARYYA, J.)