

P.H.

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 82-83 OF 2002

COMMNR. OF CUSTOMS, CALCUTTA & ORS.

Appellant (s)

VERSUS

M/S. M.M. EXPORTS & ANR.

Respondent(s)

(With appln(s) for bringing new facts and office report)

WITH

CA No.81/2002 (With office report)

Date: 1/03/2007 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.H. KAPADIA

HON'BLE MR. JUSTICE B. SUDERSHAN REDDY

For Appellant(s) Mr. R.Venkataramani, Sr.Adv.

in all cases Mr. K.Swamy, Adv.

Mr. T.A.Khan, Adv.

Mr. B. Krishna Prasad, Adv.

For Respondent(s) Mr. Pradeep K. Ghosh, Sr. Adv.

In CA Nos.82-83/02 Mr. R.P. Gupta, Adv.

Mr. Sushendra K. Chauhan, Adv.

For res.No.1&2 Mr. Joseph Vellapalli, Sr. Adv.

in CA No.81/02 Mr. Ramesh Singh, Adv.

Mr. A.T.Patra,Adv.
Mr. Nipun Malhotra,Adv.
Mr. Gaurav Juneja,Adv.
for M/s. O.P.Khaitan & Co.

For Res.No.3
In CA 81/02

Mr. Roy Abraham,Adv.
Mr. Himinder Lal,Adv.

UPON hearing counsel the Court made the following

O R D E R

Civil appeal Nos.82-83 are disposed of.

Civil appeal No.81 is dismissed.

[SUMAN WADHWA]
COURT MASTER

[MADHU SAXENA]
COURT MASTER

Signed order is placed on the file.

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 82-83 OF 2002

COMMNR. OF CUSTOMS,
CALCUTTA & ORS.

.. APPELLANTS

vs.

M/S. M.M.EXPORTS & ANR.

RESPONDENTS

WITH

CIVIL APPEAL NO. 81 OF 2002

O R D E R

IN C.A.NOS. 82-83 OF 2002

By consent the impugned order is set aside. However, we wish to make it clear that as far as possible the High Court should not interfere at the stage when the Department has issued the summons. This is not one of those exceptional cases where the High Court should have interfered at the stage of issuance of the summons. It may be mentioned that all other questions on merits are expressly kept open. We have not examined the merits of the case. The Department is entitled to proceed in accordance with law. The appeals are accordingly disposed of.

IN C.A. NO.81 OF 2002

The respondent herein, Kanhaiya Exports (P) Ltd., is an exporter. On his exports he got the benefit of duty

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exemption scheme. During the relevant period 159 consignments were exported. According to the Department later on a search was conducted. Certain documents were seized such as shipping bills, licences issued under Foreign Trade (Development Regulation) Act and some other documents. At this stage it may be pointed out that in case of ten consignments show cause notices were issued. Admittedly, for the remaining consignments no such show cause notices were ever remained. In his interim order the learned Single Judge directed the Department, if it so desires, to issue notices if they have with them adequate material to do so in accordance with law. To complete the chronology of events we may mention that after the impugned judgment of the Division Bench the Department did issue show cause notice regarding consignments other than ten consignments.

The narrow question which we are required to decide is whether without issuing show cause notice is the Department entitled to proceed against the exporter? Till today the Department has not even acted pursuant to the show cause notices which the Department had issued after the judgment impugned herein. Be that as it may, we may state that the Department is at liberty to collect the material in accordance with law but it cannot proceed against the exporter without issuance of the show cause

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notices. If they have collected the material in accordance with law and if they are today entitled to proceed in law by issuing show cause notices they may do so. Suffice it to state that with regard to the consignments other than the above mentioned ten consignments the Department cannot proceed against the exporter without issuance of show cause notice. Subject to above, the appeal is dismissed. Before concluding we may mention that as regards ten consignments, the matter was fully adjudicated upon. It was carried in appeal. Ultimately, vide judgment delivered by the Tribunal in the case of the present assessee reported in 2006 (204) ELT 295, the Tribunal held that the confiscation effected by the Department in respect of ten consignments was erroneous. To that extent of the ten consignments the assessee has succeeded before the Tribunal. However, we once again make it clear that the said judgment of the Tribunal will not preclude the Department from proceeding with the investigation. However, no further steps can be taken without issuance of show cause notice. We make it clear that we do not wish to express any opinion and our order should not be understood to mean that we are directing the Department to take any steps. We have only clarified the legal position. Subject to above, the appeal is dismissed.

.....J.

(S.H. KAPADIA)

.....J.

(B.SUDERSHAN REDDY)

NEW DELHI;

MARCH 1, 2007.