

2013 (3) ECS (74) (Guj-HC)

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 14526 OF 2012

PSL LTD ...Petitioner(s)
Versus
UNION OF INDIA THROUGH SECRETARY – MINISTRY OF FINANCE & 3
...Respondent

Appearance:

Mr A P Nainawati, Advocate for the Petitioner(s) No. 1
Mr. R J Oza, Advocate for the Respondent(s) Nos. 2 & 3
Mrs. V D Nanavati for the Respondent No. 4
Notice served by DS for the Respondent No. 1

CORAM:

HONOURABLE MR. JUSTICE AKIL KURESHI
AND
HONOURABLE MS. JUSTICE SONIA GOKANI

Date : 20/12/2012

“In view of the statutory provisions, we are of the opinion that the petitioner should avail of the statutory remedy of appeal. Considering the nature of the disputes involved, we are not inclined to entertain the petition directly.”(Para 3)

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE AKIL KURESHI)

1. When this petition was taken up for hearing, learned counsel for the Revenue raises preliminary contention that against the impugned order, the petitioner has right of appeal statutorily provided under Section 128 of the Customs Act, 1962.

2. We notice that the petitioner has challenged a order dated 8.10.2012 passed by the Assistant Commissioner of Customs, under which the petitioner's request for making duty free imports under advance licence without furnishing bank guarantee, came to be rejected. Under Section 128 of the Customs Act, 1962, any person aggrieved by an order or decision passed under the Customs Act by an officer of Customs lower in rank than the Commissioner of Customs, has a right of appeal to the Commissioner (Appeals) within 60 days from the date of receipt of communication of the order of the decision. Such period of 60 days, however, can be extended for another period of 30 days if sufficient cause for not presenting the appeal is shown.
3. In view of the statutory provisions, we are of the opinion that the petitioner should avail of the statutory remedy of appeal. Considering the nature of the disputes involved, we are not inclined to entertain the petition directly. Two things further need to be clarified. Firstly, conceding the fact that the petitioner was pursuing the remedy before this Court under bona fide, belief, the Appellate Commissioner, if the petitioner files such an appeal latest by 31.12.2012, shall hear and decide the same on merits. Secondly, since the petitioner is agitating the grievances about not being able to make imports without furnishing bank guarantee, the Commissioner shall hear such appeal expeditiously and endeavour to dispose of the same within 4 months from the date of receipt of such appeal.
4. With above observations and directions, petition is disposed of.