

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
CIVIL APPEAL NO. 1798 OF 2010

COMMISSIONER OF CUSTOMS (AIRPORT ADMIN.) KOLKATA Appellant(s)  
VERSUS  
EKTARA EXPORTS PVT. LTD. Respondent(s)



O R D E R

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 31.07.2008 passed by the High Court of Calcutta in Customs Case No. 5 of 2008, by which the Division Bench of the High Court has dismissed the said appeal preferred by the Revenue in not interfering with the order passed by the Customs Excise & Service Tax Appellate Tribunal [for short "the Tribunal"] setting aside the penalty imposed under Section 114(iii) of the Customs Act, the appellant has preferred the present Appeal.

2. We have heard Shri Vikramjit Banerjee, learned ASG, appearing on behalf of the Revenue.

3. It is the case on behalf of the Revenue that it was a case of wrong mentioning of the Section and the case would fall under Section 114(i) of the Customs Act. It is pointed out that, in the show cause notice, there was a reference to Section 114(i) or 114(iii) of the Customs Act. It is submitted that therefore on mere wrong mentioning of Section, the levy of penalty shall not fail.

Signature Not Verified

  
Digital Signed by  
SNEHA  
Date: 2022.09.08  
16:34:03 IST  
Reason: 

4. Having heard Shri Vikramjit Banerjee, learned ASG, and considering the material on record, learned ASG is not in a position to satisfy the Court how the case would fall under Section 114(i) of the Customs Act, as claimed. Nothing has been pointed out how the goods can be said to be prohibited goods. Even otherwise, it is required to be noted that there is a clear finding recorded by the learned Tribunal and confirmed by the High Court that the respondent did not claim any draw back benefit.

5. In view of the above, when the Revenue is not in a position to even satisfy this Court that the case would fall under Section 114(i) of the Customs Act and, even according to the Revenue, the case would not fall under Section 114(iii) of the Customs Act, we see no reason to interfere with the impugned judgment passed by the High Court as well as that of the Tribunal.

The present appeal fails and deserves to be dismissed and is, accordingly, dismissed.

..... J.  
(M.R. SHAH)

..... J.  
(KRISHNA MURARI)

New Delhi;  
September 01, 2022.

ITEM NO.104

COURT NO.8

SECTION XVI

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

Civil Appeal No(s). 1798/2010

COMMISSIONER OF CUSTOMS (AIRPORT ADMIN.) KOLKATA Appellant(s)

VERSUS

EKTARA EXPORTS PVT.LTD.

Respondent(s)

Date : 01-09-2022 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE M.R. SHAH  
HON'BLE MR. JUSTICE KRISHNA MURARI

For Appellant(s) Mr. Vikramjit Banerji, ASG  
Mr. Mukesh Kumar Maroria, AOR  
Mr. P.V. Yogeswaran, Adv.  
Mr. Siddharth Sinha, Adv.  
Mr. Shashank Bajpai, Adv.  
Mr. Tathagat Sharma, Adv.  
Mr. Raman Yadav, Adv.

For Respondent(s) Mr. Mukesh Chandra, Adv.  
Mr. Mayank Chandra, Adv.  
Mr. Rameshwar Prasad Goyal, AOR

UPON hearing the counsel the Court made the following  
O R D E R

The present appeal is dismissed in terms of the signed order.

Pending applications, if any, stand disposed of.

(R. NATARAJAN)  
ASTT. REGISTRAR-cum-PS

(NISHA TRIPATHI)  
ASSISTANT REGISTRAR

(Signed order is placed on the file)