IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2015

CORAM

The Honourable Mr.JUSTICE R.SUDHAKAR
and
The Honourable Mr.JUSTICE R.KARUPPIAH

Civil Miscellaneous Appeal No.21 of 2015
& M.P.No.1 of 2015

M/s.Global Overseas,
4/1, Gandhipuram,
Senguthapuram Post
Karur - 639 002.

.... Appellant

Vs.

1. The Customs Excise and Service Tax Appellate Tribunal, South Zonal Bench,
Shastri Bhavan, No.26, Haddows Road,
Chennai - 600 006.

2. The Commissioner of Central Excise,
No.1, Williams Road,
Trichy Commissionerate.

.... Respondents

APPEAL under Section 35G of the Central Excise Act, 1944 against the Misc. Order No.41841 of 2014(E/41981/2014) dated 29.10.2014 on the file of the Customs, Excise and Service Tax Appellate Tribunal, Chennai.

For Appellant : Mr. K.Jayachandran

For Respondents : Mr.T.Chandrasekaran
Standing Counsel

J U D G M E N T

(Delivered by R.SUDHAKAR,J.)

This Civil Miscellaneous Appeal is filed by the assessee as against the Misc. Order No.41841 of 2014 dated 29.10.2014 on the file of the Customs, Excise and Service Tax Appellate Tribunal, Chennai raising the following substantial question of law:

> "1. Whether in the facts and circumstances of the case, the Tribunal is justified in rejecting the Modification Application without appreciating the financial hardship explained by the appellant?

2. Whether there can be duty liability for non-observance of procedure for export when the fact of export of goods is not denied?

3. Whether for shortage of cotton yarn, can it be presumed that there was manufacture and clandestine removal without any further evidence in support of the same?

4. Whether the Tribunal is justified in passing an order under Section 35-F of the Act, again, after the appellant complied with the order partially.

2. The brief facts are as follows:

The appellant is a manufacturer and exporter of cotton made-ups articles. On the basis of the intelligence that the assessee had diverted the cotton yarn procured by them without payment of duty, the officers of Anti-Evasion, Trichy visited the unit of the assessee on 07.07.2005. On verification of the documents, it was found that the assessee, during the years 2003-04 and 2004-05, procured cotton yarn without payment of duty for the use in manufacture of export goods. Hence, show cause notice was issued to the assessee proposing to demand duty of Rs.8,29,674/- along with interest and penalty. In response to the show cause notice, the assessee had filed a reply stating that they were not liable to pay duty as demanded in the show cause notice, as the subject goods were exempted from Central Excise duty.

3. The Adjudicating Authority, after considering the reply filed by the assessee and the submissions made by the counsel for the assessee during personal hearing, passed an order confirming the demand and also levied penalty of Rs.1.00 lakh.

4. As against the said order of the Adjudicating Authority, the assessee filed an appeal before the Commissioner (Appeals), who by order dated 18.6.2013, dismissed the appeal, thereby upheld the order of the Adjudicating Authority.

5. Aggrieved by the order of the Commissioner (Appeals), the assessee pursued the matter before the Tribunal by filing an appeal along with an application for waiver of pre-deposit.

6. The Tribunal, by order dated 28.7.2014, directed the appellant/assessee to make a pre-deposit of Rs.3.00 lakhs holding as follows:

> " 4. After considering the submissions of both sides and on perusal of the records, we find that the main contention of the learned advocate is that the statement was retracted on the very next date and therefore entire demand is without any basis. On a query from the Bench, Ld. Advocate drew the attention of the Bench to affidavit dt. 8.7.2005 of Shri.A.P.Karuppannan, who is the father of the partner. The applicant claimed that the said affidavit

was sent through Certificate of Posting. Prima facie, there is no material available that applicant's affidavit dt. 8.7.2005 was received by the department. It is well settled that delivery of letter under Certificate of Posting cannot be accepted as a valid service. Hence, we are unable to accept the submission of the learned advocate. In view of that, we direct the applicant to make a predeposit of Rs.3,00,000/- (Rupees threelakhs only) within 8 weeks. Upon deposit of the said amount, predeposit of balance amount of duty along with interest and penalty would be waived and its recovery is stayed till disposal of the appeal. Compliance to be reported in 7.10.2014."

7. As against the said order of the Tribunal, the assessee/appellant is before this Court.

8. Heard learned counsel appearing for the assessee and the learned standing counsel appearing for the Revenue and perused the materials placed before this Court.

9. We have perused the orders of the Authorities below. We find that on merits, there is no serious plea with regard to the compliance of the order of pre-deposit. The only ground raised now, as has been raised before the Tribunal, is financial hardship. On that score alone, we are not inclined to entertain this appeal for modification of the order of the Tribunal ordering pre-deposit of Rs.3.00 lakhs as against the demand of Rs.7,92,877/-. However, taking note of the nature of financial difficulty pleaded by the appellant, we grant time for compliance of the pre-deposit till 27.2.2015.

10. In the light of the above, we pass the following order:

(i) The order of the Tribunal dated 28.07.2014 is modified to the effect that the appellant shall make a pre-deposit as ordered by the Tribunal on or before 27.2.2015 and subject to such compliance, as stated in the order of the Tribunal dated 28.07.2014, the pre-deposit of balance amount demanded shall remain waived and its collection shall stand stayed during the pendency of the appeal before the Tribunal

(ii) The Order of the Tribunal dated 28.07.2014 stands confirmed, if there is any failure to make pre-deposit on or before 27.02.2015.

In the result, this appeal is disposed of in the above terms. No costs. Consequently, M.P.No.1 of 2015 is closed.

Sd/-
Assistant Registrar

//True Copy//
Sub Assistant Registrar

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To

1. The Customs, Excise and Service
   Tax Appellate Tribunal, South Zonal Bench,
   Shathri Bhavan, 26 Haddows Road,Chennai.6

2. The Commissioner of Central Excise
   No.1 Williams Road, Trichy, Commissionerate

+ 1 cc to Mr.T. Chandrasekaran, Advocate sR.3593

C.M.A.No.21 of 2015
& M.P.No.1 of 2015

RSI(CO)
Eu 09.02.15