IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.10.2015

CORAM

THE HON'BLE MR. JUSTICE V.RAMASUBRAMANIAN
and
THE HON'BLE MR. JUSTICE T.MATHIVANAN

C.M.A. Nos.2163 to 2165 of 2015
and
M.P.No.1 of 2015 (in all the appeals)

M/s.Sri Sairam Exports
rep.by its Proprietor
G.P.Krishnaprasad
Chennai-1. ...Appellant in C.M.A.No.2163 of 2015

M/s.J.M.Fashions
rep.by its Partner
Jaaveedh
Thiruppur. ...Appellant in C.M.A.No.2164 of 2015

M/s.Sindhu Textiles
rep.by its Partner
M.Sikandar Basha
Chennai - 1. ...Appellant in C.M.A.No.2165 of 2015

vs

1. The Registrar,
   Customs Excise and Service Tax,
   Appellate Tribunal South Zone Bench,
   Sastri Bhavan Annex, 1st Floor,
   No.26, Haddows Road,
   Chennai-6

2. The Commissioner of Customs,
   Export (Sea Port) Customs House,
   No.60, Rajaji Salai,
   Chennai-1 ...Respondents in all the appeals

Appeals against the order dated 29.01.2008 passed by the first respondent in Miscellaneous Order No.C/PD/227/2007, C/SO/228/2007 in Appeal No.C/358/2007; Order No.C/PD/231/2007, C/SO/232/2007 in Appeal No.C/360/2007; Order No.C/PD/235/2007, C/SO/236/2007 in Appeal No.C/362/2007, respectively, on the file of the Customs, Excise and Service Appellate Tribunal, South Zonal Bench, Chennai.

For Appellants	:	Mr.S.P.Harikrishnan
For 2nd Respondent	:	Mr.A.P.Srinivas, Sr.Standing counsel

COMMON JUDGMENT

(Judgment of the Court was delivered by V.RAMASUBRAMANIAN, J.)

These appeals are by three different assessees, questioning the correctness of a common order passed by the Customs Excise and Service Tax Appellate Tribunal, directing them to make a pre-deposit of a portion of penalty levied upon them.

2. Heard Mr.S.P.Harikrishnan, learned counsel for the appellants and Mr.A.P.Srinivas, Senior Panel counsel, who takes notice for the respondents.

3. Upon receipt of an information that inferior quality of T-shirts were being exported and duty drawback was claimed in excess by one M/s.Sindhu Textiles, which is the appellant in C.M.A.No.2165 of 2015, the Docks Intelligence Unit of the Department of Customs, detained the export consignments covered by eight shipping bills, all dated 24.11.2005 and 25.11.2005. Thereafter, the Proprietor of a concern, by name, M/s.Sri Sairam Exports, which is the appellant in C.M.A.No.2163 of 20015, appeared before the Docks Intelligence Unit and claimed ownership of the goods. He claimed that he had floated M/s.Sindhu Textiles and had filed shipping bills.

4. Therefore, search of the premises of M/s.Sindhu Textiles was conducted. On the basis of the enquiries and searches conducted, it was found that M/s.Sri Sairam Exports had purchased the consignment from one M/s.J.M.Fashions, which is

the appellant in C.M.A.No.2164 of 2015. Therefore, a show cause notice dated 24.5.2006 was issued to the partners of all the three companies. The show cause notice eventually resulted in an Order in Original dated 24.8.2007. By the said order, the Commissioner of Customs fixed the value of the goods covered by the eight shipping bills at Rs.26,44,500/- instead of the declared value of Rs.1,82,33,878.10. He also ordered the confiscation of the goods, but allowed redemption on payment of a fine of Rs.3,00,000/-(rupees three lakhs). The duty drawback to the extent of Rs.12,22,923/- allegedly availed unduly by the appellants, was directed to be recovered with interest from M/s.Sri Sairam Exports. A penalty of Rs.2,00,000/- (Rupees two lakhs) was imposed upon M/s.J.M.Fashions; a penalty of Rs.3,00,000/- (Rupees three lakhs) was imposed upon M/s.Sri Sairam Exports and a sum of Rs.2,50,000/- (rupes two lakhs fifty thousand) was imposed upon M/s.Sindhu Textiles. Different penalties were also imposed upon the individual partners.

5. As against the order in Original, the appellants herein filed individual appeals. Along with the appeals, they also took out applications for waiver and stay. By a common order dated 29.01.2008, the Tribunal directed M/s.Sri Sairam Exports to deposit Rs.1,00,000/- out of the penalty of Rs.3,00,000/-. The Tribunal directed M/s.Sindhu Textiles to deposit Rs.1,00,000/- out of the penalty of Rs.2.5 lakhs. Similarly, the Tribunal directed M/s.J.M.Fashions to deposit Rs.50,000/- out of the penalty of Rs.2 lakhs. The Tribunal took note of the fact that the entire duty drawback amount of Rs.12,22,923/- (Rupees twelve lakhs twenty two thousand nine hundred twenty three) had already been recovered from M/s.Sri Sairam Exports.

6. Aggrieved by the pre-deposit condition, the appellants filed W.P.Nos.5782 to 5784 of 2008 on the file of this Court. These writ petitions were disposed of by a Division Bench of this Court by an order dated 9.4.2015 on the ground that as per the decision of this Court in M/s.Metal Weld Electrodes vs. CESTAT (W.P.Nos.24615 of 2013 etc.(batch)), a writ petition would not lie against such orders and that only a statutory appeal would lie under Section 35-G of the Central Excise Act 1944 or under Section 130 of the Customs Act. Therefore, the appellants have come up with the above appeals.

7. The only grievance of the appellants is that after having recovered the entire amount of duty drawback allegedly

claimed unlawfully to the extent of Rs.12,22,923/-, the direction to the appellants to make a pre-deposit even out of the penalty amount, would result in undue hardship to the appellants.

8. Though substantially the Tribunal has directed only 1/3rd or 1/4th of the penalty amount to be deposited as a pre-condition for entertaining the appeals and though in normal circumstances, we would not interfere with such an order, the cases on hand falls under a different category. The appeals filed by the appellants are pending from 2007 before the Tribunal. A period of eight years have gone. Therefore, there is no point in the fight over the pre-deposit condition, prolonging the appeals. Admittedly, the department has recovered the entire duty drawback amount of Rs.12,22,953/-. Even if the appeals are eventually dismissed by CESTAT, the only amounts to be recovered from the appellants would be the penalty amounts.

9. In view of the above, we allow the appeals and set aside the pre-deposit condition imposed by the CESTAT. The Tribunal is directed to number the appeals and take them up for final hearing on a priority basis in view of the fact that the appeals are already eight years old. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

msk

To

1. The Registrar,
   Customs Excise and Service Tax,
   Appellate Tribunal South Zone Bench,
   Sastri Bhavan Annex, 1st Floor,
   No.26, Haddows Road,
   Chennai-6

2. The Commissioner of Customs,
   Export (Sea Port) Customs House,
   No.60, Rajaji Salai,
   Chennai-1

1 CC to Mr.S.P.Harikrishnan, Advocate SR.No. 53541

1 CC to Mr.A.P.Srinivas, Advocate SR.No. 54130

C.M.A.Nos.2163 to 2165 of 2015

KGK (CO)
PSI (28.10.2015)