IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 04.06.2015

CORAM

THE HONOURABLE MR. JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MS. JUSTICE K.B.K.VASUKI

C.M.A. NO.861 OF 2015
AND
M.P. NO.1 OF 2015

Mr.A.M.Manickam
No.67, Thandavankuppam,
Neyveli - 607 802. .. Appellant

- Vs -

1. The Commissioner of Central Excise
No.1 Goubert Avenue,
Pondicherry - 605 001.

2. The Customs, Excise & Service
Tax Appellate Tribunal
Shastri Bhavan
Haddows Road, Chennai-600 006. .. Respondents

Appeal filed under Section 35-G of the Central Excise Act against the order dated 25.08.2014 passed by the Customs, Excise & Service Tax Appellate Tribunal, South Zonal Bench, Chennai, made in Final Order No.40700-40753/2014. as against Order dated 16.3.2010 by the Chief Commissioner of Customs, Chennai Zone made in Review Order NO.08-R/2010, as against order dated 29.12.2009, made in Original NO.84/09(c) by the Commissioner, Central Excise, Puducherry.

For Appellant : Mr. V.S.Manoj
for Mr.K.Vaitheeswaran

For Respondents 1 for R1 : Mr. V.Sundareswaran

JUDGMENT

(DELIVERED BY R.SUDHAKAR, J.)

Aggrieved by the common order of the Tribunal in remanding the matters back to the adjudicating authority in the appeal filed by the Revenue, the appellant/assessee is before this Court by filing the present appeal raising the following questions of law :-

> "i) Whether in the facts and circumstances of the case, the Tribunal was correct in remanding the case with a direction to adjudicate the matter when the Show Cause Notice itself was not maintainable as there were no specific allegations?
>
> ii) Whether in the facts and circumstances of the case, the Tribunal was correct in ignoring the decision including the decision of the Supreme Court in the case of Saci Allied Products Ltd. Vs. Commissioner of Central Excise (2005) TIOL 73?
>
> iii) Whether in the facts and circumstances of the case, the Tribunal was right in remanding the matter where the only option available was to set aside an order based on an invalid Show Cause Notice?"

2. It is submitted by the learned counsel appearing for the appellant that the issue involved in this appeal is arising out of the common order passed by the Tribunal. The said common order of the Tribunal has been challenged before this Court in a batch of appeals. This Court vide order dated 30.04.2015 in C.M.A.Nos.764 to 768 of 2015, allowed the appeals by way of remand, holding as follows:

> "16. This Court, therefore, is of the considered view that without going into these issues, mere remanding the matter back and asking the adjudicating authority to re-adjudicate the matter after giving break-up of the details to the assessees/appellants will not suffice. The issues raised by the appellants/assessees and answered by the Commissioner (Appeals) in their favour has to be considered by the Tribunal on its own merits and there being no finding on the issues in the manner in which the plea has been taken by the present appellants, who were successful before the Commissioner (Appeals), we find that the order of the Tribunal cannot be sustained on an issue of open remand.
>
> 17. The arguments of the learned standing counsel for the Department that all the issues can be trashed out before the adjudicating authority does not find favour with this Court as the Department cannot be allowed to fill up the lacunae in the show cause notices on the basis of an open remand as alleged by appellants.
>
> 18. Therefore, this Court is of the considered view that the matter has to be remitted back to the Tribunal

to consider the facts, as narrated above, as has been presented by the Department and contested by the appellants/assessees in the proceedings before the lower authorities as well.

19. Accordingly, this Court sets aside the order of the Tribunal and remands the matter back to the Tribunal to answer the issues in relation to the findings of the Commissioner (Appeals) which was under challenge before the Tribunal in the appeals. All the appeals are allowed by way of remand. Consequently, connected miscellaneous petitions are closed. However, in the circumstances of the case, there shall be no order as to costs."

3. Following the above-said decision of this Court, this Civil Miscellaneous Appeal is allowed in the same terms. No costs. Consequently, M.P.No.1 of 2015 is closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

sl
To
1. The Customs, Excise & Service
Tax Appellate Tribunal
Shastri Bhavan Annexe
Chennai.

2. The Commissioner of Central Excise
Puducherry Commissionerate.

3.The Chief Commissioner of Customs, Chennai Zone, Chennai -34.

1 cc to Mr.K.Vaitheeswaran, Advocate Sr.No.26815/2015

C.M.A. NO.861 OF 2015

cnr(co)
pmk.19.6.2015