IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 05.06.2015

CORAM

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

C.M.A. NO. 3710 OF 2011

The Commissioner of Customs (Imports)
Custom House, No.60, Rajaji Salai
Chennai 600 001. .. Appellant

- Vs -

1. M/s.NGA Steels Pvt. Ltd.
   1-14-18-D7, Bhavani Main Road
   Sankari 637 301
   Salem District.

2. Customs, Excise & Service
   Tax Appellate Tribunal
   South Zonal Bench
   Shastri Bhavan Annexe
   1st Floor, No.26, Haddows Road
   Chennai 600 006. .. Respondents

Appeal filed under Section 130 of the Customs Act against the order dated 16.10.09 passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai, made in Final Order No.1487/09.

For Appellant : Mr. S.Thirumavalavan

For Respondent : Mr. K.Jayachandran for R-1

JUDGMENT
(DELIVERED BY R.SUDHAKAR, J.)

Aggrieved by the order passed by the Tribunal in allowing the appeal filed by the assessee, the Revenue/appellant is before this Court by filing the present appeal. This Court, vide order dated 2.3.2012, while admitting the appeal, framed the following substantial question of law for consideration :-

> “Whether the Hon'ble Tribunal's order setting aside the confiscation and penalty ordered by the Adjudicating Authority is in order in terms of Public Notice No.152/2004 dated 19.10.2004 when there is

clear violation of the procedure contemplated as per Annexure I to Appendix 8 and Appendix 28 of Handbook under the EXIM Policy by the importer?"

2. The first respondent/assessee imported a consignment of re-rollable scrap through the Chennai Customs. According to the public notice issued by the Commissioner of Customs, Chennai, the importer has to file pre-shipment certificate along with the Bill of Entry while praying for assessment and clearance. In terms of Board Circular No.56/2004-Cus. dated 18.10.2004, in the absence of pre-shipment certificate, the imported goods have to be examined in full. Since the importer did not file pre-shipment certificate, the adjudicating authority imposed a redemption fine of Rs.1,25,000/= and penalty of Rs.1,00,000/=. Aggrieved by the said order of the adjudicating authority, the assessee preferred appeal before the Commissioner (Appeals), who, by order dated 13.5.05 reduced the redemption fine from Rs.1,25,000/= to Rs.75,000/= and reduced the penalty from Rs.1,00,000/= to Rs.50,000/=.

3. Against the said order, the first respondent/assessee preferred appeal to the Tribunal. The Tribunal, following the order of the Gujarat High Court in Commissioner of Customs - Vs - Senor Metals Pvt. Ltd. (2009 (236) ELT 445), set aside the redemption fine and penalty and allowed the appeal filed by the assessee, against which the appellant/Department has preferred the present appeal.

4. Learned counsel appearing for the first respondent/assessee raised a preliminary objection as to the maintainability of the case of the appellant contending that the appellant ought not to have been filed the appeal in view of Board Circular DO F. No.390/170/92-JC dated 13.1.1993, wherein for preferring an appeal, monetary limit is fixed and only if the monetary limit exceeds Rs.2 Lakhs, appeal can be filed. Since the monetary limit in the present case, even as per the order of the Commissioner (Appeals) is well within the limit of Rs.2 Lakhs, the present appeal, filed by the Department, is not maintainable.

5. Heard the learned standing counsel appearing for the appellant/Department and the learned counsel appearing for the first respondent/assessee and perused the materials available on record.

6. Even though these appeals were admitted on the above question of law, referred to supra, we are not inclined to entertain this appeal in view of the preliminary objection made by the learned counsel for the respondent that the monetary limit to prefer an appeal is pegged at Rs.2,00,000/- by the Board Circular DO F. No.390/170/92-JC dated 13.1.1993.

7. It is seen from the record that the assessing officer initially imposed Rs.1,25,000/= as redemption fine and Rs.1,00,000/= as penalty, which, on appeal, was subsequently reduced by the

Commissioner (Appeals) to Rs.75,000/= and Rs.50,000/= respectively and on further appeal by the assessee, the Tribunal set aside the order of the Commissioner (Appeals). Therefore, it is very clear from the records that the monetary limit having been fixed at Rs.2 Lakhs, even as per the order of the Commissioner (Appeals), the redemption fine and penalty being less than Rs.2 Lakhs, the appeal is not maintainable.

8. The abovesaid circular issued by the Board is squarely applicable to the facts of the present case and, therefore, this Court is not inclined to entertain this appeal. Accordingly, without going into the merits of the question of law formulated and in the light of the Board's circular mentioned supra, this appeal is dismissed as not maintainable. However, there shall be no order as to costs.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

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Chennai 600 001.

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Tax Appellate Tribunal
South Zonal Bench
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Chennai 600 006.

+1 cc to Mr.K.jayachandran, Advocate,SR.26952

+1 cc to Mr.c.Thirumavalavan, Advocate,SR.26959.

Ts(co)
krd 17/6

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