IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2015

CORAM

THE HON'BLE MR.JUSTICE R.SUDHAKAR
AND
THE HON'BLE MR.JUSTICE R.KARUPPIAH

C.M.A.Nos.779 to 781 of 2011

Commissioner of Central Excise,
Chennai - I Commissionerate,
26/1, (Old No.121) M.G.Road,
Chennai - 600 034. .. Appellant (in all CMAs)

Vs.

M/s.K.T.V. Oil Mills,
Arul Nagar Salai,
Kodungaiyur,
Chennai - 600 118. .. Respondent (in all CMAs)

Prayer: Appeals filed under Section 35G of the Central Excise Act, 1944 against the Final Order Nos.869 to 871 of 2010, dated 10.08.2010 passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench at Chennai.

against the order of the Commissioner of Central Excise (Appeals) Chennai-34 dated 15.10.2003 and made order in Appeal No.133/03 (M-1)and made order in Appeal No.172/2003 (M-1) and 173/2003 (M-1) dated 11.12.2003 respectively against the order of the Assistant Commissioner of Central excise D-Division, Chennai-I, Commissionerate, Chennai-34 dated 13.2.2002 and made order in original No.8/2002 order in Original No.18/2001 dated 25.5.2001 and order in original No.23/2001 dated 14.6.2001 respectively.

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For Appellant : Mr.Rajnish Pathiyil
Standing Counsel
for M/s.T.R. Senthilkumar

For Respondent : Mr.Hari Radhakrishnan

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J U D G M E N T

(Delivered by R.SUDHAKAR,J.)

The above appeals filed by the Department challenging the Final Order No.869 of 2010, dated 10.08.2010 passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench at Chennai, was admitted by this Court on the following questions of law:

> "Whether on the facts and circumstances of the case, the Appellate Tribunal is right in granting relief to the assessee without considering the conditions laid down in Notifications No.20/1999-Cus. dated 1.3.99, 16/2000 - Cus. dated 1.3.2000 and 17/2001 - Cus. dated 1.3.2001 during the respective periods read with Rule 8 of Customs (Import of Goods at concessional Rate of duty for manufacture of excisable goods) Rules, 1996?"

2. The assessee imported crude sunflower oil during January 2000 to November 2001 and availed concessional rate of duty in terms of Notification Nos.20/1999 - Cus. dated 01.03.1999, 16/2000 - Cus. dated 1.3.2000 and 17/2001 - Cus. dated 1.3.2001 during the respective periods. But the Assistant Commissioner of Central Excise taking the quantity in the ship ullage survey report demanded differential duty. Aggrieved by the said order, the assessee filed appeals before the Commissioner (Appeals), who accepted the plea of the assessee and allowed the appeal, thereby set aside the demand. Aggrieved by the said order, the Department filed an appeal before the Tribunal. The Tribunal confirmed the order of the Commissioner (Appeals), thereby dismissed the appeals holding that as per Circular No.96/2002-Cus. dated 27.12.2002 it is the quantity received in the shore tank which is required to be accepted. Aggrieved by the said order, the department has filed the present appeals on the question of law, referred supra.

3. We have heard the learned Standing Counsel appearing for the department and the learned counsel appearing for the first respondent and perused the order passed by the Tribunal and other documents.

4. At the outset, learned counsel for the respondent objected to the maintainability of the appeal before this Court on the above question of law raised by the department. It is the plea of the learned counsel for the respondent that Section 35G of the Central Excise Act provides that an appeal on the issue relating to rate of duty of excise or value of goods for purposes of assessment would not lie before this Court. He placed strong reliance on the

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decision of the Supreme Court in Navin Chemicals Manufacturing and Trading Co. Ltd. v. Collector of Customs, 1993 (68) ELT 3 (SC), wherein it is held as under:

> "11. It will be seen that sub-section (5) uses the said expression determination of any question having a relation to the rate of duty or to the value of goods for the purposes of assessment and the Explanation thereto provides a definition of it for the purposes of this sub-section. The Explanation says that the expression includes the determination of a question relating to the rate of duty; to the valuation of goods for purposes of assessment; to the classification of goods under the Tariff and whether or not they are covered by an exemption notification; and whether the value of goods for purposes of assessment should be enhanced or reduced having regard to certain matters that the said Act provides for. Although this Explanation expressly confines the definition of the said expression to sub-section (5) of Section 129-D, it is proper that the said expression used in the other parts of the said Act should be interpreted similarly. The statutory definition accords with the meaning we have given to the said expression above. Questions relating to the rate of duty and to the value of goods for purposes of assessment are questions that squarely fall within the meaning of the said expression. A dispute as to the classification of goods and as to whether or not they are covered by an exemption notification relates directly and proximately to the rate of duty applicable thereto for purposes of assessment. Whether the value of goods for purposes of assessment is required to be increased or decreased is a question that relates directly and proximately to the value of goods for purposes of assessment. The statutory definition of the said expression indicates that it has to be read to limit its application to cases where, for the purposes of assessment, questions arise directly and proximately as to the rate of duty or the value of the goods.
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> 12. This, then, is the test for the purposes of determining whether or not an appeal should be heard by a Special Bench of CEGAT, whether or not a reference by CEGAT lies to the High Court and whether or not an appeal lies directly to the Supreme Court from a decision of CEGAT: does the question that requires determination have a direct and proximate relation, for the purposes of assessment, to the rate

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of duty applicable to the goods or to the value of the goods."

(emphasis supplied)

5. The present appeal is filed under Section 35G of the Central Excise Act and it is apposite to refer to Section 35G of the Central Excise Act, which reads as under:

"Section 35G. Appeal to High Court.—(1) An appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal on or after the 1st day of July, 2003 (not being an order relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for the purposes of assessment), if the High Court is satisfied that the case involves a substantial question of law."

(emphasis supplied)

6. In the present case, the issue that arises for consideration is whether the benefit of concessional rate of duty in terms of Notification No.20/99 - Cus. dated 28.2.1999 as amended by Notification No.139/99- Cus. dated 30.12.1999 is available to the assessee on import of crude sunflower oil and what will be the rate of duty that is payable by the respondent, but for the notification in question. Therefore, the objection of the learned counsel for the respondent is sustained.

7. The above said view of this Court is fortified by a decision of the Gujarat High Court in Commissioner of Central Excise v. JBF Industries Ltd., 2011 (264) ELT 162 (Guj.), wherein it is held as under:

"10. In the light of the aforesaid judicial pronouncements, it is apparent that the question as to the applicability of a notification or a circular which has a bearing on the determination of the rate of duty is a question which has a direct and proximate relationship to the rate of duty and to the value of goods for purposes of assessment. In the circumstances, the present appeal which relates to the applicability of the above referred circular, relates directly to the determination of rate of duty for the purpose of assessment and as such, in the light of the provisions of Section 35G read with Section 35L of the Act, this Court has no jurisdiction to entertain the appeal."

(emphasis supplied)

For the foregoing reasons, we hold that this appeal is not maintainable and accordingly, the same is dismissed giving liberty

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to the appellant to pursue the matter before the appropriate forum. Since the appeal is held not maintainable, we do not propose to go into the merits of the questions of law raised for consideration. No costs.

Sd/-
Asst.Registrar (CS IV )

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Sub Asst. Registrar

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To

1. The Assistant Registrar
Customs, Excise and Service Tax Appellate Tribunal
South Zone Bench, Sasthri Bhavan Avenue
1st Floor, Haddows Road, Chennai - 600 006.

2. The Commissioner of Central Excise (Appeals)
Chennai-34

3. The Assistant Commissioner of
Central Excise D Division
Chennai-I Commissionerate
Chennai-34

1 cc to Mr. Rajnish Pathiyil, Advocate, sr. 12628
1 cc to Mr. Hari Radhakrishnan, Advocate, sr. 12527



JSV (CO)
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