In the High Court of Judicature at Madras

Dated: 09.01.2015

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

Civil Miscellaneous Appeal No.449 of 2014
& M.P.No.1 of 2014

Dinesh D.Bajaj
.... Appellant

Vs.

1. The Commissioner of Customs
(Seaport-Export), Custom House,
No.60, Rajaji Salai, Chennai - 600 001.

2. The Customs Excise and Service Tax
Appellate Tribunal, South Zonal Bench,
No.26, Sashtri Bhavan Annexe Building,
Haddows Road, Chennai - 600 006.
.... Respondents

APPEAL filed under Section 130 of the Customs Act filed as against the Miscellaneous Order No.41453 of 2013 dated 12.06.2013 in C/S/235/11 in Appeal No.C/298/11 on the file of the Customs, Excise and Service Tax Appellate Tribunal, Chennai.

For Appellant : Mr. B.Satish Sundar

For Respondents : Mr.P.Mahadevan
Standing Counsel -R1



J U D G M E N T

(Delivered by R.SUDHAKAR,J.)

This Civil Miscellaneous Appeal has been filed by the assessee as against the Miscellaneous Order No.41453 of 2013 dated 12.06.2013 on the file of the Customs, Excise and Service Tax Appellate Tribunal, Chennai, raising the following substantial questions of law:

"1. Whether on the facts and circumstances of the case, the second respondent Tribunal, viz., Customs, Excise and Service Tax Appellate Tribunal, South Zonal

Bench, Chennai is right in holding that the appellant has not made out a prima facie case in his favour against the demand and therefore directing the appellant to pre-deposit a sum of Rs.45 lakhs for the entertainment of the appeal.

2. Is the second respondent Tribunal is in error in not looking into the financial hardships pleaded and also to the fact that the appellant had paid a sum of Rs.27.79 lakhs pending investigation, which has been appropriated in the order passed by the first respondent which is under challenge before the second respondent, Tribunal?"

2. The brief facts are as follows:

The appellant/assessee is an importer of self-adhesive tapes. During the period 2004 to 2007, the assessee imported 44 consignments of self-adhesive tapes. Based on the intelligence, on 18.06.2007, the officers of the Directorate of Revenue Intelligence (DRI) searched the office premises of the assessee and recovered 22 box files, 8 flat files and two hard disks. On the basis of the statements recorded, a show cause notice was issued alleging misdeclaration of the value of the goods imported by the assessee. Based on the analysis report of the Government Examiner of Questioned Documents, it was also alleged that the appellant was involved in gross misdeclaration of value of payment of duty. The Department found invoices of Chinese manufacturer addressed to the supplier and the Investigating Authorities came to the conclusion that the appellants imported the goods through Hong Kong based mediator, viz., M/s.Viraqua Ltd. to facilitate undervaluation of the BOPP self-adhesive tapes imported by them from China. In response to the show cause notice issued, the assessee filed reply. Not satisfied with the reply, by the adjudication order, the Adjudicating Authority rejected the value declared by the appellants and demanded the differential duty at Rs.8,47,003/-, 5,68,88,947/-, 1,35,25,281/-, 9,30,749/- and 4,90,759/-, totalling to Rs.1,57,93,792/- under the provisions of the Customs Act together with penalty under Section 114A of the Customs Act equivalent to the duty along with interest.

3. The Adjudicating Authority observed in the order that the appellant had paid a sum of Rs.27,79,394/- during the course of investigation and the said amount should be appropriated and adjusted towards differential duty and other adjudication liabilities.

4. Aggrieved by the above said order of adjudication, the assessee preferred an appeal before the Tribunal along with an application for waiver of pre-deposit.

5. The Tribunal, after taking into consideration the facts and circumstances of the case, found that the e-mails of the appellant to foreign supplier recovered from the seized hard disk, statements etc show that the appellant had been making arrangement for transfer of funds to the manufacturer of goods. The Tribunal further found that the documents were examined by the Government Examiner of Questioned Documents, who was also cross examined. It is relevant to note that the appellant failed to refute any of the evidence recorded. Hence, the Tribunal, taking note of the admission of the undervaluation of three bills of entry by the appellant, ordered pre-deposit of a sum of Rs.45,00,000/-.

6. Aggrieved by the said order of the Tribunal, the assessee is before this Court raising the above-mentioned substantial questions of law.

7. Learned counsel appearing for the appellant submitted that the Tribunal had failed to take note of the fact that the appellant had already paid a sum of Rs.27.79 lakhs pending investigation. He further submitted that since the appellant has made some payment, there is prima facie case in favour of the appellant. Hence, the order of the Tribunal has to be set aside.

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

9. A perusal of the order of the Tribunal shows that the Tribunal was benevolent in ordering pre-deposit of Rs.45.00 lakhs, which comes to approximately 30% of the total amount demanded. It is seen that the Tribunal is consistently following the procedure of ordering 25% of the total demand in many cases. The grant of waiver of pre-deposit depends on the facts and circumstances of each case and the discretion is vested with the Tribunal to grant the same. Even assuming that the appellant had paid a sum of Rs.27.00 lakhs, the same comes to only 17% of the total demand, which is not a substantial amount. Even the pre-deposit ordered by the Tribunal and the amount paid by the appellant, which comes to approximately Rs.72,00,000/-, do not cover 50% of the total amount demanded. Since the appellant, at the threshold, did not show any documentary evidence showing prima facie case in their favour, much less financial hardship, we are not inclined to interfere with the order of the Tribunal. More over, the appellant had admitted the undervaluation of three bills of entry. Hence, the Tribunal is justified in ordering pre-deposit of Rs.45.00 lakhs.

10. In the light of the above, finding no question of law much less any substantial question of law arises for consideration, this Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, M.P.No.1 of 2014 is also dismissed.

11. It is stated by the learned counsel appearing for the appellant that for non-compliance of the stay order, the Tribunal has dismissed the main appeal itself and the appellant is yet to file an appeal as against the said order of the Tribunal dismissing the main appeal. It is open to the appellant to challenge the said order of the Tribunal in the manner known to law.

Sd/-
Asst.Registrar (CS II )

/true copy/

Sub Asst. Registrar

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To

1. The Customs, Excise and Service Tax Appellate Tribunal,
South Zonal Bench, No.26 Sashtri Bhavan
Annexe Building, Haddows Road
Chennai-6

2. The Commissioner of Customs Seaport(Exports),
No.60 Rajaji Salai
Chennai.

1 cc to Mr.P. Mahadevan, Advocate, Sr. 2022
1 cc to Mr. Satish Sundar, Advocate, Sr. 1491

C.M.A.No.449 of 2014
& M.P.No.1 of 2014

MG (CO)
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