IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 18.06.2015

CORAM

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

C.M.A. No.1013 of 2010
AND
M.P.No.1 of 2010

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

- Vs -

1. M/s.N.T.Rama Rao
16 Suknu Rama Street,
II Floor, Chennai - 600 001.

2. The Customs, Excise & Service
Tax Appellate Tribunal
South Zonal Bench,
Shastri Bhavan Annexe, 1st Floor
26 Haddows Road, Chennai-600 006.
.. Respondents

Appeal filed under Section 130 of the Customs Act against the order dated 12.08.2009 passed by the Customs, Excise & Service Tax Appellate Tribunal, South Zonal Bench, Chennai, made in Final Order No.967 of 2009.

For Appellant : No appearance
For Respondents: Mr. B.Satish Sundar - R1
R2 : Tribunal

JUDGMENT
(DELIVERED BY R.SUDHAKAR, J.)

Aggrieved by the order of the Tribunal in dismissing the appeal filed by the Department, the appellant/Revenue is before this Court by filing the present appeal raising the following questions of law :-

"i) Whether the CESTAT is correct in holding that order passed through adjudication proceedings for non compliance of the regulations of the CHALR 2004 is an order relating to renewal of CHA license and further holding that the said order is administrative in nature and not a quasi-judicial order?

ii) Whether the CESTAT is correct in rejecting the appeal of Revenue as not maintainable before the Tribunal, based on incorrect facts that the issue relates to renewal of the CHA licence, while the issue pertains to penal proceedings under Regulations 20(1) of CHALR 2004.

2. The brief facts of the case are as follows:

The first respondent is a holder of regular CHA licence issued in terms of CHALR framed under Section 146 of the Customs Act, 1962. It is alleged that one M/s.Pearl Pharma, Hyderabad exported goods misusing the DEPB benefit scheme by declaring export goods as omerprazole, whereas the said goods are only ordinary starch powder and the first respondent had filed shipping bill on behalf of the said exporter. Hence, show cause notice was issued to the first respondent alleging that the first respondent had violated the obligations cast on him in CHALR 2004. The Commissioner of Customs, after due process of law, dropped the proceedings and passed an order in the following manner:

"In view of the discussions, findings and conclusions hereinabove and also keeping in mind the various case laws cited above, I order as follows:

(i) the allegation against the Noticee CHA of having failed to comply with the Regulation 13(a), (b) (d), (e) & (n) of the CHALR, 2004 are not sustained and hence dropped.

(ii) the proposal to hold the Noticee CHA responsible for the acts and omissions of their employee Shri Muninathan is not sustained.

(iii) The Noticee CHA has failed to exercise the desired level of supervision on his employees and as such, the charges of having violated the Regulation 19(8) of the CHALR, 2004 is upheld. However, in view of the mitigating factors and unblemished past record of the noticee CHA noticee discussed hereinabove I take a lenient view and refrain from imposing any penalty on the noticee. Nonetheless I advise the noticee CHA to be more careful in future in the supervision of their employees.

> (iv) The Noticee CHA is permitted to continue to conduct their business as a Custom House Agent in the normal course."

3. Aggrieved by the said order of the Adjudicating Authority, the Department pursued the matter before the Tribunal. The Tribunal dismissed the appeal holding that no appeal would lie relating to the renewal of CHA licence, which is administrative in nature. For better clarity, the relevant portion of the order of the Tribunal reads as follows:

> "2. Heard both sides. It has already been held by the Tribunal in the case of A.S.Vasan & Cons Vs. Commissioner of Customs (General), Mumbai - 2008 (230) ELT 374 that an order relating to renewal of CHA licence is administrative in nature and not a quasi-judicial order against which an appeal is maintainable before the Tribunal. The Tribunal has held that an appeal does not lie before the Tribunal following the judgment of the Hon'ble Calcutta High Court in M.Dutta Agench Vs. Commissioner - 1998 (1) LCX 77 and Tribunal's decision in P.Cawasji and Co. - 2000 (119) ELT 606 and G.P.Jaiswal - 2008 (226) ELT 707. The Tribunal's order in A.S.Vasan & Sons cited supra has been upheld by the Bombay High Court as seen from 2009 (238) ELT 217.
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> 3. Following the ratio of the above decisions and also following the ratio of the Tribunal's order in Tass Clearing Services Pvt. Ltd. Vs. Commissioner of Customs, Hyderabad -2009 (238) ELT 671, I reject the appeal of the Revenue as not maintainable before the tribunal. "

4. Aggrieved by the order of the Tribunal, the Revenue is before this Court raising the above-mentioned questions of law.

5. Heard learned counsel appearing for the second respondent and none appears for the appellant.

6. It is seen that the Revenue has rightly raised the above-mentioned questions of law in this appeal in an admitted case of adjudication by the Commissioner of Customs. A perusal of the order of the Tribunal reveals that the Tribunal on the wrong premise passed an order that an appeal is not maintainable in a case of renewal of CHA licence, which is not a case on hand. The issue on hand is with regard to the cancellation of licence issued to the first respondent, whereas the Tribunal held that the order of the Adjudicating Authority is with regard to renewal of licence, which is administrative in nature. Hence, the Tribunal on the wrong premise dismissed the appeal filed by the Revenue. Accordingly, we set aside the order of the Tribunal and remanded the matter back to the Tribunal for fresh consideration.

In the result, this Civil Miscellaneous Appeal stands allowed by way of remand. No costs. Consequently, M.P.No.1 of 2010 is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To
1. The Customs, Excise & Service
   Tax Appellate Tribunal
   South Zonal Bench,
   Shastri Bhavan Annexe, 1st Floor
   26 Haddows Road, Chennai-600 006.

+1cc to Mr.V. Sundareswaran, Advocate, S.R.No.30499
+1cc to Mr.B. Satish Sundar, Advocate, S.R.No.

SV(CO)
EU(24/07/2015)

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