

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 27.02.2015

CORAM

THE HONOURABLE MR. JUSTICE R.SUDHAKAR
and
THE HONOURABLE MR.JUSTICE R.KARUPPIAH

CIVIL MISCELLANEOUS APPEAL No.1184 OF 2008

Commissioner of Customs (Port-Exports)
Custom House, Chennai - 600 001.

... Appellant /Petitioner

- Vs -

1. Veejay Lakshmi Engineering Works Ltd.,
No.8, ATT Colony,
Coimbatore - 641 018.
2. Customs, Excise & Service Tax Appellate Tribunal,
South Zonal Bench,
Shastri Bhawan Annexe, 1st Floor,
26, Haddows Road, Chennai - 600 006.

... Respondents/Respondents

PETITION under Section 130 of the Customs Act against the ordet dated 20.06.2007 made in Final Order No.777 of 2007 on the file of the Customs, Excise and Service Tax Appellate Tribunal, Chennai, Southern Regional Bench, Chennai - 6.

For Appellant : Mr.P.Mahaadevan

For Respondents : Mr.T.Ramesh - R1

J U D G M E N T

(Delivered by R.SUDHAKAR, J.)

This Civil Miscellaneous Appeal filed by the Revenue against the order of the Tribunal dated 20.6.2007 allowing the appeal filed by the assessee, was admitted by this Court on the following substantial question of law:

"Whether relaxation or exemption on the proper date for determination of the rate of duty is permissible when there is no provision under Section 15(1) of the Customs Act, 1962 or not?"

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

The assessee filed advanced noted bill of entry dated 20.5.1998 for clearance of goods, viz., components for the manufacture of Automatic Cone Winders. Due to the strike by Tug Masters, the

vessel, on arrival, waited at the outer anchorage and the inward entry was made only after midnight of 1.6.1998, on which date new levy under Section 3A of the Customs Tariff Act, viz., Special Additional Duty (SAD) at the rate of 8% was made applicable to the goods. The said duty was also collected from the assessee. Since the vessel was arrived early, but the inward entry was made belatedly, the assessee filed refund claim on 1.12.1998 on the ground that the levy was not on account of any default by the assessee. The said claim was rejected by the jurisdiction Commissioner vide Order-in-Original dated 27.08.1999. On appeal, at the instance of the assessee, the Commissioner (Appeals) upheld the order of the Adjudicating Authority, thereby, dismissed the appeal. Aggrieved by the said order, the assessee pursued the matter before the Tribunal. The Tribunal, allowed the appeal granting relief to the importer holding that the assessee was constrained to pay SAD on the goods due to no fault off theirs. Aggrieved by the said order of the Tribunal, the Revenue is before this Court.

3. The primary objection that has been raised by the counsel for the first respondent is that the appeal in terms of Section 130 of the Customs Act is not maintainable, as the primary issue in this case is in relation to the rate of Special Additional Duty payable.

4. Heard learned Standing counsel appearing for the appellant and the learned counsel appearing for the respondent and perused the materials placed before this Court.

5. Here is a case where the goods arrived in port on 20.5.1998, but the entry to the goods was granted on the midnight of 01/2.06.1998. As a result, the goods became chargeable to duty of customs as on the date of the grant of entry inwards and in the instant case, a new levy of Special Additional Duty at the rate of 8% under Section 3A of the Customs Tariff Act was levied. The Tribunal holds that for the reasons beyond the control of the importer, the Special Additional Duty is not payable.

6. The preliminary objection raised by the first respondent is that the question that has to be determined in this appeal has a direct bearing in relation to the rate of Special Additional Duty on the goods imported and that there is a bar under Section 130(1) of the Customs Act. The present appeal is filed under Section 130 of the Customs Act and it is apposite to refer to Section 130(1) of the Customs Act, which reads as under:

"130. 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 customs or to the value of goods for purpose of assessment), if

the High Court is satisfied that the case involves a substantial question of law."

7. In view of the above provision, we find that the Tribunal in this case has come to the conclusion that in terms of Section 15(1) of the Customs Act, the rate of Special Additional Duty will not be payable by the assessee. That issue, we find, cannot be agitated before this Court in view of the specific provision under Section 130 (1) of the Customs Act. Therefore, the objection of the learned counsel for the first respondent is sustained.

8. This view was fortified by the decision of the Supreme Court in the case of Navin Chemicals Manufacturing & Trading Co. Ltd. - Vs - Collector of Customs (1993 (68) ELT 3 (SC)), wherein, the Supreme Court held as follows:

"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.

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 of duty applicable to the goods or to the value of the goods." (emphasis supplied)

9. For the foregoing reasons, we hold that this appeal is not maintainable and accordingly, the same is dismissed giving liberty to the appellant to pursue the matter before the appropriate forum. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sl
To

1. Customs, Excise & Service Tax Appellate Tribunal,
South Zonal Bench, Shastri Bhawan Annexe, 1st Floor,
26, Haddows Road, Chennai - 600 006.
2. The Commissioner of Customs (Appeals), Custom House, Chennai - 1.
3. The Assistant Commissioner of Customs, (Appraising Refunds),
Custom House, 33, Rajaji Salai, Chennai - 600001.
4. The Commissioner of Customs
(Port-Exports)
Custom House, Chennai-7

Copy to: The Section Officer, V.R. Section, High Court, Madras

- 1 cc to Mr. P. Mahaadevan, Advocate, SR.No.11227
1 cc to Mr. T. Ramesh, Advocate, SR.No.11092

C.M.A.No.1184 OF 2008

rsi(co)
pmk.20.3.2015