IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATE : 11.06.2015

CORAM

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

C.M.A. NO. 2989 OF 2008

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

- Vs -

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

2. M/s.Super Auto Forge Ltd.
TS-82/2, Mettu Street
Ganapathy Nagar,
Ekkatuthangal, Chennai 600 097. .. Respondents

Appeal filed under Section 130 of the Customs Act against the order dated 08.02.2008 passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai, made in Final Order No.91/08.

For Appellant : Mr. Vikram Ramakrishnan

For Respondents: Mr. Hari Radhakrishnan for R-2

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 questions of law for consideration :-

"1) Whether the Tribunal is right in ignoring the description of goods in the Bill of Entry which has been certified by the importer (2nd respondent) to be correct by means of a statutory declaration?

2) Whether the Tribunal is right in allowing the appeal and setting aisde the order of confiscation

and penalty by placing reliance on a subsequent clearance without appreciating the fact that each Bill of Entry is a separate and distinct transaction in terms of the provisions of the Customs Act, 1962?

3) Whether the Tribunal is right in setting aside the order of confiscation and penalty based on presumptions and assumptions after having admitted the fact that there has been a misdeclaration in the Bill of Entry?

4) Whether the Tribunal is right in setting aside the order imposing penalty under Section 112 of the Customs Act, 1962?"

2. The case relates to confiscation of goods and consequent imposition of redemption fine and penalty in a case of import of second hand machinery under different consignments under different bills of entry. The adjudicating authority confiscated the goods and imposed redemption fine of Rs.3,00,000/= and penalty of Rs.70,000/=. Aggrieved by the said order of the adjudicating authority, the assessee preferred appeal before the Commissioner (Appeals), who, by order dated 26.8.05 reduced the redemption fine from Rs.3,00,000/= to Rs.1,30,000/= and reduced the penalty from Rs.70,000/= to Rs.40,000/=.

3. Against the said order, the 2nd respondent/assessee preferred appeal to the Tribunal. However, the Department did not file any appeal against the order of the Commissioner (Appeals) for restoration of redemption fine and penalty. The Tribunal, on considering the facts of the case, on merits, found that the confiscation ordered under Section 111-D of the Customs Act is not maintainable and as a result, allowed the appeal filed by the assessee, against which the appellant/Department has preferred the present appeal.

4. Learned counsel appearing for the 2nd respondent/assessee raised a preliminary objection as to the maintainability of the case of the appellant contending that the appellant ought not to have 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 2nd respondent/assessee and perused the materials available on record.

6. Even though this appeal was admitted on the above questions 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 2nd 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 records that the assessing officer initially imposed Rs.3,00,000/= as redemption fine and Rs.70,000/= as penalty, which, on appeal, was subsequently reduced by the Commissioner (Appeals) to Rs.1,30,000/= and Rs.40,000/= 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 questions 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/-
Asst.Registrar (J)

/true copy/
Sub Asst. Registrar

GLN

To

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Chennai 600 001.

2. The Customs, Excise & Service
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1 cc to Mr.Haja Radhakrishnan, Advocate, Sr. 28797

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