IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.1.2016

Coram

The Honourable Mr.Justice M.JAICHANDREN

and

The Honourable Mrs.Justice S.VIMALA

C.M.A.No.2041 of 2015

M/s.Sharon Solutions India Pvt. Ltd.,
No.A15-18, Thirubuvanai
PIPDC electronic Park
Puducherry - 605 107
rep by its Director Ms.Uma Maheswari ... Appellant

-vs-

1. The Customs, Excise and Service Tax Appellate Tribunal
Haddows Road, Shastri Bhawan Annexe 1st Floor
Chennai - 600 006
By its Assistant Registrar

2. The Commissioner of Customs
(Airport & Air cargo)
New Custom House, Meenambakkam
Chennai - 600 027 ... Respondents

Civil Miscellaneous Appeal No.2041 of 2015, has been filed under Section 130(1) of the Customs Act, 1962, against the impugned miscellaneous order No.41003 of 2015 dated 27.7.2015 in Final Order No.40357/2014/dated 27.6.2014 in C/16/2012-DB passed by the 1st respondent/Tribunal.

For appellant : Mr.N.Viswanathan

For respondents : Mr.A.P.Srinivas

J U D G M E N T

(The Judgment of the Court was made by

M.JAICHANDREN,J.)

This Civil Miscellaneous Appeal had been filed against the Miscellaneous Order No.41003/2015, dated 27.7.2015, made in Final Order No.40357/2014, dated 27.6.2014, in C/16/2012-DB passed by the Customs, Excise and Service Tax Appellate Tribunal, Chennai, dismissing the appeal filed by the appellant for non-compliance of the stay order, dated 12.6.2012, as well as the order passed by this Court, dated 21.4.2014, in W.A.No.2592 of 2012, directing the appellant to deposit a sum of Rs.1.00 Crore, within a period of eight weeks from the date of the said order.

2. The present Civil Miscellaneous Appeal had been filed by the appellant raising the following substantial questions of law:

> "1. Whether the tribunal was correct in refusing to restore the appeal of the appellant on the ground that it has no jurisdiction to entertain the appeal, even when the facts on record showed that there was a total change in circumstances occasioned by the revenue due to which the appellant could not comply with the pre-deposit direction in its entirety?
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> 2. Whether the tribunal was correct in not considering the fact that its direction to continue with the bank guarantee of Rs.1.8 crores and to additionally pay a further sum of Rs.1 crore in cash as approved by the division bench of this Court did not exist on the date of the appellant moving the restoration petition, since the revenue has already encashed the said Bank Guarantee of Rs.1.81 crores and additionally collected Rs.62 lakhs leaving only the balance of Rs.37 lakhs to be remitted by them and which they could not remit due to the undue financial hardship experienced by them, before drawing the conclusion that they had not jurisdiction to entertain the petition seeking restoration of their appeal?
>
> 3. Whether the Tribunal was correct in relying upon the judgment of the Hon'ble Supreme Court in the case of Lindt Exports Vs. Commissioner of customs reported in 2013 (297) ELT A15 (SC) without noticing that in the said case, the final order passed by the tribunal was approved by the High Court, unlike the case of the appellant, where only the interim pre-deposit order was approved by the Division Bench of this Court more particularly when there was a total change of circumstances subsequent to the passing of the interim order?

4. Whether the Tribunal was correct in not considering the judgments of the Hon'ble Gujarat High Court in the case of Hussein Haji Harun reported in 1995 (77) ELT 803 (Guj) and the Bombay High Court in the case of Union of India Vs. Yusuf Dhanani reported in 2008 (229) ELT A67 (Bom) holding that the Tribunal is empowered and has the power to modify its earlier interim order when there is change of circumstances reported?"

3. Even though various grounds had been raised by the appellant challenging the order passed by the Tribunal, the learned counsel appearing for the appellant, had submitted, at this stage of the hearing of the appeal, that the bank guarantee furnished by the appellant, for Rs.1,63,03,455/-, on 14.7.2014 and for Rs.17,78,249/-, on 19.7.2014, had been encashed by the respondent Department. In such circumstances, this Court may be pleased to set aside the order of the Tribunal, dated 27.6.2014, and the Tribunal may be directed to restore the matter on its file and hear the same and pass appropriate orders, on merits and in accordance with law.

4. The learned counsel appearing for the second respondent had not refuted the submissions made by the learned counsel appearing for the appellant. In such circumstances, we find it appropriate to set aside the order of the Tribunal, dated 27.6.2014, and the Tribunal is directed to restore the matter on its file and hear the same and pass appropriate orders, on merits and in accordance with law, as expeditiously as possible. No costs. Connected M.P.No.1 of 2015 is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To:

1. The Customs, Excise and Service Tax Appellate Tribunal,
Haddows Road, Shastri Bhawan Annexe 1st Floor,
Chennai - 600 006,
By its Assistant Registrar.

2. The Commissioner of Customs,
(Airport & Air cargo),
New Custom House, Meenambakkam,
Chennai - 600 027.

+1cc to Mr.V.Sundareswaran, Advocate, S.R.No.3874
+2cc to Mr.N.Viswanathan, Advocate, S.R.No.3688

ksj(CO)
srg(10/02/2016)