IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.2.2016

CORAM

THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

Civil Miscellaneous Appeal No.315 of 2016
and
C.M.P.No.2500 of 2016

Commissioner of Customs (Exports)
Custom House, Chennai 600 001. Appellant/Respondent

Versus

1 M/s.Pradeep Industries,
No.5 & 6, Gajapathy Street,
Triplicane, Chennai 600 005. Appellant/Respondent

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

Respondents/Respondent

Prayer: Civil Miscellaneous Appeal under section 130 of the Customs Act, 1962, against the Final Order No.A1134/2006 dated 27.11.2006 passed by the Customs, Excise, & Service Tax Appellate Tribunal, South Zonal Bench, Chennai.

For Appellant : Mr.T.Chandrasekaran

JUDGMENT
(Judgment of the court was delivered by
V.RAMASUBRAMANIAN, J.)

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This appeal is filed by the Revenue under section 130 of the Customs Act, 1962, raising the following substantial question of law:-

https://hcservices.ecourts.gov.in/hcservices/

"Whether the Hon'ble CESTAT has failed to analyse the facts of the case that M/s.Pradeep Industries, Chennai have failed to fulfil the conditions of the Notification with relevant documentary evidence?"

2. Heard Mr.T.Chandrasekaran, learned Senior Panel Counsel for the appellant.

3. The respondent/assessee imported permitted quantity of Stainless Steel Coils/Sheets against licences issued to them. According to the appellant/Revenue, the respondent had an export obligation to the tune of 1059.651 Metric Tonnes of resultant export products, but, they exported only 764.723 Metric Tones of resultant export goods. It is also the case of the appellant/Revenue that the total quantity of resultant export goods exported by the assessee included one particular quantity which was manufactured from out of raw materials procured locally.

4. Therefore, a show cause notice was issued on 26.2.2003 based upon investigation conducted by DRI. An order in original was passed on 12.7.2004, which was reversed by CESTAT. Therefore, the Revenue is before us.

5. It is seen from the order of the CESTAT, that the conclusions, to which CESTAT came to, are based upon the issues of fact. In para 3 of its order the CESTAT has recorded a finding that there was no evidence of diversion of inputs by the appellant. As a consequence, the CESTAT found that the imported inputs were not diverted. The CESTAT also found that no quantity of raw materials imported by the assessee was recovered from any trader or other person in the local market and that no payment representing the sale proceeds of such raw materials was shown to have been received by the appellant from any trader.

6. There was also a finding of fact by the Tribunal that though the DEEC scheme obligated the appellants to utilise the imported raw materials entirely for the manufacture of goods for exports, it did not prohibit the utilisation of locally prepared raw materials, for the said purpose, in addition to the imported raw materials. In particular, the Tribunal recorded a finding that the Department has no case that the export obligation was not discharged by the assessee.

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7. In the light of the above categorical finding of facts, no question of law arises for consideration. We should also point out one more fact. The present appeal, though numbered in the year 2016, arose out of an order passed by CESTAT in the year 2006. The appeal itself, though filed in the year 2007, got numbered after condonation of delay, thereby leaving a huge time gap of ten years from the date of the order of the Tribunal. Therefore, the appeal is dismissed. No costs. The connected miscellaneous petition is also dismissed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

ssk.

To:

1 M/s.Pradeep Industries,
No.5 & 6, Gajapathy Street,
Triplicane, Chennai 600 005.

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+1 cc to Mr.T.Chandrasekaran Advocate sr.12043/16

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C.M.A.No.315 of 2016

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