

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 06.06.2016

CORAM

THE HONOURABLE MR. JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

Writ Appeal No.425 of 2016

Socomec Innovative Power Solutions Pvt.Ltd.,
(formerly known as Socomec UPS India Pvt.Ltd.,)
rep. By its Country Manager (F&A) Devesh Singhania,
B1, 2nd Floor, Thiru.Vi.Ka Industrial Estate,
Guindy, Chennai - 600 032. ... Appellant

Vs.

1.Commissioner of Customs (Appeals),
Customs House,
60, Rajaji Salai,
Chennai - 600 001.

2.Assistant Commissioner of Customs (Group 5A)
Customs House,
60, Rajaji Salai,
Chennai - 600 001.rai ... Respondents

(Cause Title accepted vide
Order of Court dated 29.1.2016
made in CMP No.1205 of 2016)

PRAYER: Writ Appeal under Clause 15 of the Letters Patent to set aside the order dated 06.11.2014 passed by this Court made in Writ Petition No.18676 of 2013, filed under article 226 of the Constitution of India seeking for the issuance of a Writ of Certiorari to call for the records in order in Appeal C Cus No.468-547/2013 dated 28.3.2013 in File Nos. C3/64/ O/ 2013-Sea C3/ 752-761 789-802 907-914 1028-1034 1070-1073 1204-1206 1210-1219 1236/O/2012 SEA C3/10-16 132-135 163-165 202-209/O/2013-SEA passed by the 1st respondent and quash the same as arbitrary and illegal.

For Appellant : Mr.Joseph Prabhakar

For Respondents: Mr.A.P.Srivinvas,
Standing Counsel for Customs

JUDGMENT

(Judgment of the Court was delivered by S.MANIKUMAR, J, and
D.KRISHNAKUMAR, J)

This Writ Appeal has been preferred against the order of the learned single Judge dated 6.11.2014 made in W.P.No.18676 of 2013 dismissing the Writ Petition on the ground that the writ petitioner approached the Writ Court without exhausting the efficacious alternative remedy.

2. According to the counsel for the appellant, the appellant company is engaged in the business of sale and installation of imported Uninterrupted Power Supply Systems (UPS). The appellant company imported one unit of "Uninterrupted Power Supply System 200 KVA Delphys Green Power C6 with Cardboard/Pallet Packing", which falls under Customs Chapter Heading 85 04 40 90 vide Bill of Entry No.5709384 dated 11.01.2012 for value of Rs6,99,691.47. The imported machine normally attracts 7.5% Basic Duty, 10% CVD and 4% SAD apart from Cess. As per the Customs Notification No.25/2005 dated 01.03.2005, which provides for exemption of Basic Customs Duty for import of "Static Converters for automatic data processing machines and units thereof, and telecommunication apparatus, the appellant company claimed exemption of Basic Customs Duty (BCD) 7.5% as per Sl.No.4 of Customs Notification No.25/2005 dated 01.03.2005 in respect of the goods imported vide Bill of Entry No.5709384 dated 11.01.2012.

3. The relevant portions of the Customs Notification No.25/2005 dated 01.03.2005 reads as follows:-

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962), the Central Government, on being satisfied that it is necessary in the public interest so to do, thereby exempts following the goods of the description specified in column (3) of the Table below and falling within the heading, sub-heading or tariff item of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) as are specified in the corresponding entry in column (2) of the said Table, when imported into India, from the whole of the duty of customs leviable thereon under the said First Schedule, namely:-

S. No	Heading, Sub-heading or Tariff item	Description of goods
(1)	(2)	(3)

S. No	Heading, Sub-heading or Tariff item	Description of goods
4.	8504 40	Static converters for automatic data processing machines and units thereof, and telecommunication apparatus

4. In support of his claim seeking exemption, the appellant company furnished orders passed in similar matters by the Assistant Commissioner of Customs, ICD, Thuglabad, New Delhi, allowing exemption, vide order in Original No.21/2010 dated 11.01.2010, and also the Assistant Commissioner of Customs (Group 5B & C) allowing the exemption by order dated 27.4.2010, apart from the required explanation. However, the second respondent/Assistant Commissioner of Customs, Chennai, rejected the claim of the appellant company by order dated 03.02.2012.

5. Aggrieved against this order, the appellant preferred a Writ Petition in W.P.No.4095 of 2012 before this Court. Ultimately, by order dated 07.01.2013, the Writ Petition was disposed of with a direction to the appellant to pursue alternative remedy of filing an appeal before the appellate authority. Between June 2012 and January 2013, the appellant imported UPS under various Bills of Entry and paid Basic Customs Duty of 7.5% under protest. Subsequently, the appellant filed 80 appeals challenging the assessments. As the appellate authority/first respondent passed common Order No.468-547/2003 dated 28.3.2013 rejecting the claim of the appellant, Writ Petition No.18676 of 2003 was filed by the appellant seeking for issuance of Writ of Certiorari to quash the order in Appeal C-Cus No.468-547/2013 dated 28.3.2013 in File Nos.C3/64/0/2013-Sea, C3/752-761, 789/802, 907-914, 1028-1034, 1070-1073, 1204-1206, 1210 - 1219, 1236/0/2012 SEA, C310-16, 132-135, 163-165, 202-209/0/2012-Sea passed by the first respondent/Commissioner of Customs (Appeal), Chennai.

6. The learned counsel for the appellant had submitted before the learned Judge in the Writ Petition that as per the Notification No.25/2005 Cus, exemption is available for import of Static Converters (UPS) for automatic data processing machines and units thereof, and telecommunication apparatus and the equipment imported by the appellant is indeed a UPS System, which is meant for automatic data processing machines. Though there is no dispute on classification of the imported goods but

the dispute is only with regard to the interpretation of an exemption notification.

7. After considering the factual and legal submissions made by the learned counsel for the appellant as well as the respondents, the learned single Judge dismissed the Writ Petition vide W.P.No.18676 of 2013 by order dated 6.11.2014 as not maintainable in view of the provisions of Section 129-A of the Customs Act, any person aggrieved by the order can prefer an appeal to the CESTAT. However, liberty was granted to the appellant to prefer appeal before the CESTAT. Aggrieved by this Order, the present Writ Appeal has been filed by the writ petitioner/appellant.

8. Mr. Joseph Prabakar, learned counsel appearing for the appellant would submit that the first respondent passed a common order in Appeal No.No.468-547/2003 dated 28.3.2013 confirming the findings of the second respondent holding that the order dated 11.1.2010 pertains to chargers to mobile phones and not the UPS 200 KVA without considering the similar order passed by the department. With regard to the end use point, he placed reliance on the decision of the Hon'ble Supreme Court in Camlin Ltd., Versus Commissioner of Central Excise, Mumbai reported in 2008 (230) E.L.T.193 (S.C.).

9. Per contra, the learned counsel appearing for the respondents would submit that the learned single Judge has rightly dismissed the Writ Petition as not maintainable in view of the statutory appeal remedy available before the appellate authority under Section 129-A of the Act. Further, he would submit that these are the disputed facts, which cannot be decided by this Court under Article 226 of the Constitution of India.

10. Heard the learned counsel appearing for the appellant and the learned counsel for the respondents.

11. The appellant is engaged in the business of sale and installation of imported Uninterrupted Power Supply Systems (UPS), which falls under Chapter Heading 85 04 40 90 attracting 7.5% Basic Duty, 10% CVD and 4% SAD apart from Cess. Subsequently, when the appellant claimed exemption of Duty, it was rejected by the second respondent by Order in Original No.18260/2012 dated 3.2.2012 rejecting the claim of exemption of Uninterrupted Power Supply System. Against the aforesaid order passed by the second respondent dated 3.2.2012, the appellant filed Writ Petition No.4095 of 2012 before the Court. By

order dated 7.1.2013, this Court was pleased to dismiss the Writ Petition with liberty to file an appeal under Section 129 of the Customs Act 1962. By a common order dated 28.3.2013, the appellate authority, namely, the first respondent dismissed the appeal along with other Appeals. It was held that the assessee being a trader, had not come out with any un-impeachable evidence to show that the impugned goods are directly used only in IT industries. Therefore, he is not specified with the materials and submissions made by the appellant with regard to the goods imported seeking exemption. As such, by a common order, the first respondent dismissed all the appeals preferred by the appellant.

12. Aggrieved by the order passed by the first respondent, the present Writ Petition No.18676 of 2013 was filed by the appellant challenging the said common order of the first respondent dated 28.3.2013 before this Court under Article 226 of the Constitution of India. On the basis of the earlier order passed by the department by granting exemption for UPS, the appellant would submit that the same was not considered by the appellate authority in the present case. Therefore, the appellant filed the Writ Petition without exhausting the alternative remedy, since the issue is already covered by the department order. The respondent department disputed the fact for granting of exemption to the appellant. In support of his contention, the appellant relied upon the decision of the Hon'ble Supreme Court in Camlin Ltd., Versus Commissioner of Central Excise, Mumbai reported in 2008 (230) E.L.T.193 (S.C.) wherein it was held that end use verification of products is necessary for availing the benefit of concession of duty and also relied on the decision rendered in Canon India Pvt.Ltd., vs. State of Tamil Nadu reported in 2014 (305) E.L.T. 255 (Mad.) and contended that in the light of the aforesaid decisions, the Writ Petition is maintainable.

13. The point for consideration in the Writ Appeal is whether the Writ Petition is maintainable under Article 226 of the Constitution of India without exhausting the alternative remedy u/s.129-A of the Customs Act, 1962?

14. In the case of Liberty Oil Mills Pvt.Ltd., v. Collector of Central Excise reported in 1995 (75) ELT 13 (SC), the Hon'ble Supreme Court has held that in a case of an ambiguity or doubt regarding an exemption provision in a fiscal statute, the ambiguity or doubt will be resolved in favour of the revenue and not in favour of the assessee. In any event, these contentions could very well be raised before the appellate authority and the petitioner has not placed any material before

that Court to justify its action in bypassing the appellate remedy available under the Act.

15. Further, in the case of National Insurance Co.Ltd., v. Nicolletta Rohtagi reported in (2002) 7 SCC 456, the Hon'ble Supreme Court held that appeal being a product of the statute, it is not open to an insurer to take any plea other than those provided under Section 149(2) of the Act.

16. The aforesaid decision of the Hon'ble Supreme Court was followed in the case of Sadhana Lodh Vs. National Insurance Co.Ltd., reported in (2003) 3 Supreme Court Cases 524 and another and held that the right of appeal is a statutory right and where the law provides remedy by filing an appeal on limited grounds, the grounds of challenge cannot be enlarged by filing a petition under Articles 226 of the Constitution of India.

17. In C.A.Ibrahim v. ITO, AIR 1961 SC 609, H.B.Gandhi v. M/s. Gopinath & sons, 1992 (Suppl) 2 SCC 312 and in Karnataka Chemical Industries v. Union of India, 1999 (113) E.L.T. 17(SC) = 2000 (10) SCC 13, the Supreme Court held that where there is a hierarchy of appeals provided by the statute the party must exhaust the statutory remedies before resorting to writ jurisdiction.

18. In Sheela Devi v. Jaspal Singh, AIR 1999 SC 2859 and Punjab National Bank v. D.C.Krishna, 2001 (6) SCC 569, the Supreme Court held that if the statute provides for remedy of revision or appeal, writ jurisdiction should not be invoked.

19. In Union of India v. T.R.Verma, AIR 1957 SC 882, the Supreme Court held that it is well settled that when an alternative and equally efficacious remedy is open to a litigant, he should be required to pursue that remedy and not invoke the special jurisdiction of the High Court to issue a prerogative writ. It will be a sound exercise of discretion to refuse to interfere in a petition under Article 226 of the Constitution unless there are good grounds to do otherwise.

20. In A. Venkatasubbiah Naidu v. S. Chellappan, (2000) 7 SCC 695 (vide para 22), the Supreme Court deprecated the practice of exercising the writ jurisdiction when an efficacious alternative remedy is available.

21. This being the legal position, the Writ Petition filed under Article 226 of the Constitution of India by the appellant company was wholly misconceived and the same is not maintainable. Therefore, the learned Judge has rightly dismissed the Writ Petition as not maintainable in the light of the appeal remedy under Section 129-A of the Act. We find no infirmity in the order of the learned single Judge dated 6.11.2014 passed in W.P.No.18676 of 2013.

22. In the light of the above discussion, liberty is granted to the appellant to file an appeal, if so advised, under Section 129-A of the Customs Act before the CESTAT, within 3 weeks from the date of receipt of a copy of this order. The Writ Appeal is dismissed with the above observation. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.Commissioner of Customs (Appeals),
Customs House,
60, Rajaji Salai,
Chennai - 600 001.

2.Assistant Commissioner of Customs (Group 5A)
Customs House,
60, Rajaji Salai,
Chennai - 600 001.

+1cc to Mr.Joseph Prabakar, Advocate Sr.29956

+1cc to Mr.A.P.Srinivas, Advocate sr.30028

W.A.No.425 of 2016

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srg 23/06/2016

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