BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED:21.03.2017

CORAM :
THE HONOURABLE MR.JUSTICE R.SUBRMANIAN

Writ Petition(MD)No.3551 of 2013

M/s.P.K.P.N.Spinning Mills Private Limited
represented by its Director P.K.Jayagopal,
No.6,Bye-pass Road,Pallipalayam,
Erode-638 006 ... Petitioner

Vs.

1.The Joint Secretary (Revision Application),New Delhi
14,HUDCO VISHALA BLDG,B Wing
6th Floor, Bikaji Cama Place,
New Delhi -110066.

2.The Commissioner of Customs (Appeals),
Customs Department,No.1 Williams Road,
Cantonment. Tirichirapalli -620001.

3.The Assistant Commissioner of Customs (ARC),
Customs House, New Harbour Estate,
Tuticorin -600086. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records culminating in the first Respondent's order No.36/13-Cus dated 28.01.2013 and quash the same and direct the first respondent to dispose of the revision application dated 24.09.2012 F.No.373/91/DBK/12-RA filed by the petitioner.

For Petitioner : Ms.L.Maithili

For Respondents :Mr.S.Gurumoorthy

ORDER

Aggrieved by the order of rejection passed by the Central Government in the revision filed under Section 129DD of the Customs Act, 1962, the present writ petition has been filed.

2.The dispute relates to duty drawback to which the petitioner is entitled to as per the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995. The short question that was raised before the Commissioner (Appeals) in the appeal filed by the petitioner under Section 128 is as to whether the petitioner was justified in adding Currency Adjustment Factor (CAF) and Bunker Adjustment Factor (BAF) to the FOB value of the goods exported. The Commissioner (Appeals) held against the petitioner. Thus, the quantum of duty draw back allowable to the petitioner was reduced. As against the order of the Commissioner, the petitioner preferred a revision under Section 129DD of the Customs Act, 1962 before the Central Government. The said revision has been rejected on the ground that the petitioner has to approach the Customs Excise and Service Tax Appellate Tribunal (CESTAT). In the impugned order, the revisional authority has observed that in view of the second proviso to Section 129A, an appeal would lie to the Tribunal. Section 129A(1) reads as follows:-

"Section 129A.Appeals to the Appellate Tribunal-(1)Any person aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order:-

(a)a decision or order passed by the [Principal Commissioner of Customs or Commissioner of Customs] as an adjudicating authority;

(b)an order passed by the [Commissioner (Appeals) under Section 128A;

(c)an order passed by the Board or the [Appellate Commissioner of Customs] under Section 128, as it stood immediately before the appointed day;

(d)an order passed by the Board or the [Principal Commissioner of Customs or Commissioner of Customs], either before or after the appointed day, under Section 130, as it stood immediately before that day:

[Provided that no appeal shall lie to the Appellate Tribunal and the Appellate Tribunal shall not have jurisdiction to decide any appeal in respect of any order referred to in clause (b) if such order relates to

(a)any goods imported or exported as baggage;

(b)any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India, or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination;

(c)payment of drawback as provided in Chapter X, and the rules made thereunder: (emphasis supplied)

[Provided further that the Appellate Tribunal may, in its discretion, refuse to admit an appeal in respect of an order referred to in clause (b) or clause (c) or clause (d) where:-

(i)the value of the goods confiscated without option having been given to the owner of the goods to pay a fine in lieu of confiscation under Section 125; or

(ii)in any disputed case, other than a case where the determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment is in issue or is one of the points in issue, the difference in duty involved; or

(iii)the amount of fine or penalty determined by such order,does not exceed [two lakh rupees]"

3.No doubt, Section 129(1B) provides for an appeal to the appellate Tribunal against an order passed by the Commissioner (Appeals) under Section 128A. However, the first proviso extracted above, prohibits an appeal to the appellate Tribunal and also states that the appellate Tribunal shall not have jurisdiction to decide an appeal in respect of an order referred to in clause (b), if such order relates to payment of drawback. The second proviso to Section 129A which has been extracted above confers discretion on the Tribunal to reject the appeals, if the value of the goods confiscated or the rate of duty of customs, or the value of the goods for the purposes of assessment or the amount of fine or penalty does not exceed Rs.2 lakhs. The Joint Secretary, the first respondent herein has referred to the second proviso and held that an appeal would lie to the Tribunal. I am of the considered opinion, the interpretation placed on the second proviso of under section 129A(1) by the first respondent is not justified. Clause (c) of the first proviso clearly bars the appeal to the appellate tribunal against an order referred to clause (b) namely, an order passed by the Commissioner of Appeals under Section 128A if that order relates to payment of drawback as provided under Chapter X. The second proviso is only an enabling provision which allows a discretion to the appellate Tribunal to reject appeals in respect of an order passed under clause (b) (i.e.) under Section 128(A) by the Commissioner of Appeals, if the value is less than Rs.2 lakhs. As rightly submitted by the learned counsel for the petitioner, the revisional authority has misread second proviso to Section 129A(1). Therefore, the order of the revisional authority is set aside and the revision petition is remitted to the revisional authority to be decided on merits and in accordance with law.

4.The writ petition is accordingly allowed. No costs.

Sd/-
Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

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3.The Assistant Commissioner of Customs (ARC),
Customs House, New Harbour Estate,
Tuticorin -600086.
+1cc to M/S.M.Ramasamy,Advocate,SR.16343
+1cc to M/S.S.Gurumoorthy,Advocate,SR.16255

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SMS
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