<u>The Hon'ble Sri Justice C.V.Nagarjuna Reddy</u>

<u>and</u>

<u>The Hon'ble Sri Justice M.S.K.Jaiswal</u>

<u>C.E.A.No.61 of 2016</u>

<u>Dt: 21-12-2017</u>

Between:

Deep Chand Agarwal

….Appellant

and

The Commissioner,
Customs and Excise Department (A.P),
Hyderabad, Telangana

….Respondent

Counsel for the Appellant: **Mr.Amit Mahajan**

The Court made the following:

Judgment: **(per Hon'ble Sri Justice C.V.Nagarjuna Reddy)**

This Appeal is filed assailing Order No.41104/2015, dated 25.08.2015, in ROA Application No.G/ROA/40386/2015 in Appeal No. G/60/1987-DB, on the file of the Customs, Central Excise and Service Tax Appellate Tribunal, South Zonal Bench at Chennai (for short 'the Appellate Tribunal').

The brief facts leading to filing of this Appeal are noted hereunder:

Against Adjudication Order No.15/86, dated 18.11.1986, passed by the Collector of Customs and Central Excise, Hyderabad, the appellant has filed Appeal No.60/7/MAS along with a stay-cum-waiver application. By Order, dated 08-06-1987, the said Application was decided by the Appellate Tribunal and the appellant was directed to deposit a sum of Rs.10,000/-, imposed upon him as penalty under Section 74 of the Gold (Control) Act, 1968, on or before 30-06-1987. The appellant could not comply with the said conditional order. As a consequence thereof, a Final Order was passed, on 30-06-1987, by the Appellate Tribunal, which reads as under:

> "The appellant is absent and has sought an adjournment. We find from the records that the Tribunal by order dated 8-6-1987 in Order No.169/87, directed the appellant to deposit a sum of Rs.10,000/- on or before 30-6-1987 and report compliance. There is no information regarding the compliance of the said order of the Tribunal. In the circumstances, the appeal is dismissed in terms of Section 82-A of the Gold (Control) Act, 1968."

The appellant has filed an Application, in the year 2012, for recalling the afore-mentioned Final Order, dated 30-06-1987. The said Application as dismissed by the Appellate Tribunal by its Order, dated 09-01-2014. The relevant portion of the said Order reads as under:

> "The applicant claimed that they had filed application in 1987 for recalling the Stay Order and in 1995 for direction to deposit Rs.10,000/- as per stay order. But they have not produced any acknowledgement of the application filed in 1987 and 1995 by the Registry of the Tribunal. There is no evidence that the applicant deposited fees for miscellaneous applications. We agree with the submission of the learned Authorised Representative that the telegram is in respect of the hearing on 4.04.1987 and it has no relevance in respect of stay order dated 08.06.1987. At any event, the application (without date) filed in June, 1987 as claimed by the applicant for restoration of stay petition, which has no bearing as the Final Order was passed on 30.09.1987. Further, the application filed in November, 1995 as

> claimed by the applicant, is for direction to allow them to deposit Rs.10,000/- in terms of Stay Order dated 08.06.1987. The present application filed on 03.09.2012 for recalling the Final Order dated 30.06.1987. In effect, after about 25 years the applicant filed, the application for recalling of Final Order dated 30.06.1987.
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> We have already observed that the applicant failed to produce any evidence in respect of acknowledgment of filing of application in 1987 and 1995 and deposit of fees, for filing application before the Tribunal. In the result, we accept the contention of the learned Authorised Representative that the application for recalling of Final order dated 30.06.1987 filed in 2012 after about 25 years cannot be accepted and it is liable to be dismissed. We have also noted that the applicant had not deposited Rs.10,000/- as per Stay Order dated 08.6.1987 till date. So, we do not find any merit in the submission of the learned Advocate that appeal was dismissed on 30.06.1987 before the time limit as mentioned in Stay Order dated 08.06.1987. Therefore, there is no need to discuss on maintainability of application after repeal of Gold (Control) Act, as raised by the learned Authorised Representative."

The appellant has not challenged either Final Order, dated 30.06.1987, dismissing his Appeal or Order, dated 09.01.2014, dismissing his Miscellaneous Application filed for recalling the said Final Order. However, in the year 2014, another application was filed by him to recall Miscellaneous Order, dated 09-01-2014. This Application also came to be dismissed by the Appellate Tribunal by Order, dated 04.06.2014. While referring to Order, dated 09.01.2014, (wrongly shown as Order, dated 01-01-2014, in Para 5 of the Order), the Appellate Tribunal has dismissed the Application unequivocally holding that it does not find any reasons for rectification or recalling of Miscellaneous Order, dated 09.01.2014.

Undeterred by dismissal of the previous applications, the appellant has filed one more application *i.e.,* G/ROA/40386/2015 for recalling Miscellaneous Order, dated 04.06.2014. This Application also met the same fate, as that of the earlier Applications, with its dismissal, on 26.08.2015, by the Appellate Tribunal. The relevant portion of the said Order is reproduced hereunder:

> "We find this Tribunal vide miscellaneous order No.40435/2014 dated 09.01.2014 has dismissed their application for recall of Final Order No.429/1987 dated 30.06.1987. Again the appellant filed another application to recall the said order dated 09.01.2014 and this Tribunal vide miscellaneous order No.41296/2014 dated 04.06.2014 discussed the issue in detail and dismissed their application. Having this Tribunal only dismissed their application in above orders, the appellants seeking to recall the said order amounts review of Tribunal Order. There is no legal provision in the Act or Rules to

> entertain application. Accordingly, the miscellaneous application dated 06.04.2015 is dismissed."

From the flurry of applications filed by the appellant, it is evident that he has been seeking to revive a stale claim. As rightly observed by the Appellate Tribunal in its Miscellaneous Order, dated 09-01-2014, the appellant has filed his Application about 25 years after passing of the Final Order seeking its recall. Thus, the very initial application for recalling the Final Order suffered from uncondonable latches. Even if the appellant felt aggrieved by dismissal of the said Application on 09.01.2014, the appropriate remedy for him was to file an Appeal against such dismissal. Instead of doing so, he went on filing Applications one after the other for recalling earlier orders. The Application, on which the Order under Appeal was passed, was also not filed for restoration of the Appeal, but only to recall Order, dated 04.06.2014, by which the appellant's earlier Application filed for recalling Miscellaneous Order, dated 09.01.2014, was dismissed.

We have, absolutely, no doubt in our mind that the appellant is indulging in frivolous and vexatious litigation by wasting the time of not only the Appellate Tribunal by filing repeated applications but also of this Court by filing this Appeal on imaginary and non-existent grounds. On the facts of this case narrated herein before, the so-called substantial questions of law framed by the appellant do not arise at all.

For the aforementioned reasons, we dismiss this Appeal with costs of Rs.10,000/- payable to the Chief Justice Relief Fund.

As a sequel to dismissal of the Appeal, CEAMP.No.79 of 2016, filed by the appellant for interim relief, is disposed of as infructuous.

(C.V.Nagarjuna Reddy, J)

(M.S.K.Jaiswal, J)

Date: 21-12-2017
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