IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Civil Miscellaneous Appeal No.2828 of 2016

L.Harish Gandhi,
No.10-3-188, Chandra Niwas,
St. John's Road, Secuderabad,
Andhra Pradesh-500 026. .. Appellant

-vs-

1.Customs, Excise & Service Tax Appellate Tribunal,
1st Floor, Shastri Bhavan Annexe, Haddows Road,
Nungambakkam, Chennai-600 006.

2.The Commissioner of Customs (Imports),
Customs House, 60, Rajaji Salai, Chennai-600 001.
.. Respondents

Civil Miscellaneous Appeal filed under Section 130 of the Customs Act, 1962 to set aside the order of the Customs, Excise and Service Tax Appellate Tribunal in Final Order No.41053/2016 dated 27.06.2016.

For Appellant : Mr.M.Karthikeyan
For Respondent-2 : Mr.A.P.Srinivas, Senior Standing Counsel

JUDGMENT

[Delivered by T.S.Sivagnanam, J.]

This appeal, by the assessee, is directed against the order passed by the Customs, Excise and Service Tax Appellate Tribunal in Final Order No.41053/2016 dated 27.06.2016.

2.The above appeal has been admitted on the following substantial question of law, vide order dated 03.02.2017:-

> “Whether the first respondent is right in imposing penalty on the appellant for his alleged deliberate acts of omissions and commission, on his capacity as co-noticee, where proceedings against the main noticee under Section 28(2) of Customs Act, 1962 have been concluded in toto over the same issue?”

3.After hearing the learned counsel for the appellant and the learned Senior Standing Counsel for the Revenue, we note that the appellant seeks to place certain factual issues, which according to them were placed before the Tribunal, which were not dealt with and also the appellant seeks to rely upon a Circular bearing No.11/2016 dated 15.03.2016, which is a clarification regarding "other persons" (co-noticees) used in sub-Section (2) and sub-Section (6) of Section 28 of the Customs Act, 1962.

4.The assessee's specific case before us is that benefit of such statutory provision was brought to the notice of the Tribunal and the matter was not examined by the Tribunal.

5.Furthermore, it is submitted that it is the appellant, who has paid the entire duty liability along with penalty and the present liability of Rs.2,00,000/- imposed on the appellant in his personal capacity is not warranted.

6.Considering the plea raised by the appellant, we are of the view that if there are any factual discrepancies or effect of the notification which is to be pressed into service, then the appellant should have moved an appropriate miscellaneous application before the Tribunal.

7.Faced with this situation, the learned counsel for the appellant submitted that if liberty is granted, the appellant will move the Tribunal for appropriate liberty.

8.Accordingly, this Civil Miscellaneous Appeal is disposed of giving liberty to the appellant to file a miscellaneous application before the Tribunal raising appropriate contentions and if such application is filed within a period of fifteen days' from the date of receipt of a copy of this judgment, the Tribunal shall not reject the application on the ground of limitation, but entertain the same and decide the application on its own merits.

9.In the light of the above direction, the substantial question of law is left open to be raised and agitated by the assessee at a later point of time, if need arises. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

abr

To

1.The Customs, Excise & Service Tax Appellate Tribunal,
1st Floor, Shastri Bhavan Annexe, Haddows Road,
Nungambakkam, Chennai-600 006.

2.The Commissioner of Customs (Imports),
Customs House, 60, Rajaji Salai, Chennai-600 001.

+1cc to Mr.S.Jaikumar, Advocate SR.No.61071
+1cc to Mr.A.P.Srinivas, Advocate SR.No.61098

PA(CO)
sm:4.10.2018

C.M.A.No.2828 of 2016