IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 03.09.2018
CORAM
THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
C.M.A.No.3519 of 2010

Commissioner of Customs (Exports)
Customs House, Chennai - 600 001. .... Appellant

Vs

1. M/s.Sujana Steels
No.18, Nagarjuna Hills, Panjagutta
Hyderabad - 500 082.

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

Prayer : Civil Miscellaneous Appeal filed under Section 130 of the Customs Act, 1962 to call for the records of the lower forums, set aside the impugned final order No.1236/07 dated 09.10.2007 passed by the Hon'ble CESTAT, Chennai, and to restore the O-in-O No.87/2001 dated 27.4.2001 passed by the Chief Commissioner of Customs, Chennai with costs.

For Petitioner : Mr.Pramod Kumar Chopda
For Respondents : Mr.M.Karthikeyan
for Mr.S.Jaikumar - For R1

JUDGMENT
(Judgment of the Court was delivered by T.S.SIVAGNANAM, J.)

This appeal filed by the revenue is directed against the order passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zone Bench, Chennai, in Appeal No.C/259/2006 dated 09.10.2007. The appeal has been admitted on the following substantial questions of law, by the order dated 28.01.2011.

" 1. Whether the Hon'ble CESTAT was correct in holding that there is no evidence of any raw material having been physically diverted and used for purposes other than for fulfilment of export obligation under the VABAL. When there was no sufficient stock of raw materials and / or finished goods to manufacture and export the balance quantity of 2018.46 Mts which was shown to have been exported for the purpose of fulfillment of export obligation against the aforesaid advance licence (VABAL) was available at the time of verification of stock by DRI and further corroborated by the deposition of Sri Jawahar Babu in his statement dated 11.06.98 that they sold the imported goods at Chennai.

2. Whether substantive legislation (viz., Circulars) can over ride the provisions of the Act and Notification issued there under.

3. Whether an importer enjoying the benefit of an exemption notification is bound to satisfy / comply with the conditions stipulated in the said notification for availing such exemption or not?

4. Whether Clause VI of the Notification No. 203/92-Cus dated 19.05.1992 under which the 1st respondent / importer got exemption from payment of duty of the raw materials imported, is mandatory or not, especially when the said clause makes it clear that exempt materials shall not be disposed of or utilized in any manner except for utilization in the discharge of export obligations?

5. Whether the Appellate Tribunal is right in holding that the issuance of discharge certificate by the competent authority would absolve the liability of the importer in satisfying the test of compliance of the mandatory conditions stipulated in the exemption notification?

6. Whether the order of the Appellate Tribunal in diluting the exemption Notificate No.203/92 is justified in law as it is against the recent pronouncement of the Hon'ble Supreme Court in the case of Sanghvi Re-Conditioners Pvt. Ltd., Vs. Union of India and others reported in 2010

(2) SCC 733 wherein it has been held that exemption notifications have to be strictly construed and a person claiming benefit of exemption notification must show that he has satisfied the eligibility criteria?"

2. The facts which are necessary for the disposal of the appeal are as hereunder. The respondent / assessee imported duty free raw material against advance license dated 28.10.1994. A search was conducted in the business premises of the assessee, resulting in a show cause notice dated 10.12.1994, as to why the benefit under the DEEC scheme under various customs notifications should not be denied to the assessee for having not fulfilled the conditions in the notifications, why confiscation should not be ordered under Section 111(o) of the Customs Act, 1962 on the alleged ground of misutilisation of raw material, why duty should not be demanded under Section 28(1) of the Act, why interest should not be levied under Section 28B of the Act and why penalty should not be imposed under Section 114A of the Act.

3. The assessee submitted their reply and the Commissioner of Customs awarded order in original dated 27.04.2001, confirming the proposal of the show cause notice. The assessee filed an appeal before the tribunal, contending that they have satisfied the condition of license by exporting in excess of the limit set in the advance license issued by the Joint Director General of Foreign Trade, Hyderabad under DEEC scheme. They further contended that the conditions in the notification has been misinterpreted by the adjudicating authority. Various other contentions and legal submissions were made before the tribunal vide order dated 16.01.2002, allowed the appeal filed by the assessee, set aside the order passed by the adjudicating authority and remanded the matter to be adjudicated afresh in accordance with law, bearing in mind the observations contained in the order passed by the tribunal. Pursuant to such orderS, the Commissioner of Customs (Exports) took up the matter for de-novo adjudication and passed the order dated 19.01.2005 and dropped the proposal in the show cause notice dated 10.12.1994. Challenging the same, the revenue preferred the appeal before the tribunal. The tribunal, by the order dated 09.10.2007, has dismissed the appeal filed by the revenue. This order is now challenged in this appeal.

4. Heard Mr.Pramod Kumar Chopda, learned counsel for the appellant and Mr.Karthikeyan, learned counsel for the respondent / assessee.

5. Before proceeding to decide the matter on merits, what is first required to be considered is whether any substantial question of law arises for consideration in this appeal. As

against the order passed by the tribunal, an appeal lies to this Court under Section 130 of the Act and the appeal is entertainable if the court is satisfied that the case involves a substantial question of law. Therefore, the Court has to first consider as to whether substantial questions of law arises for consideration in this appeal.

6. Learned counsel for the revenue vehemently contended that the observations made by the tribunal as well as the Commissioner in the de-novo adjudication order are wholly unsustainable and contrary to the findings recorded in the panchanama dated 11.06.1998. Learned counsel has drawn the attention of this court to the various answers given by the assessee to the questions posed by the investigation officers as well as the stock position as recorded in the panchanama and submitted that the sale of finished products manufactured from the imported goods locally was admitted by the Managing Director of the assessee and this issue was not considered by the tribunal while passing the order dated 16.01.2002, nor the impugned order.

7. In our considered view, the revenue cannot raise the contentions questioning the order passed by the CESTAT dated 16.01.2002, which has attained finality. Since the revenue did not challenge the said order by filing an appeal before this High Court, the contentions raised by the learned counsel Mr.Pramod Kumar Chopda that the order is only an order of remand and therefore the department participated in the de-novo adjudication cannot be sustained and we are not inclined to accept the other said submission on account of candid and pointed observations made by the tribunal as to the manner in which the adjudication order was required to be done de-novo. Thus, the order passed by the tribunal dated 16.01.2002 was not an order of remand simplicitor but order with pointed observations and directions explicitly with regard to the stock of raw materials and finished goods in the factory premises. Thus, the revenue are estopped from raising any contentions challenging the validity of the order passed by the tribunal dated 16.01.2002. After remand, the Commissioner took up the matter for de-novo adjudication and passed a very detailed order, in which the stock position has been taken into consideration and the findings recorded in paragraph 45 of the order of the Commissioner will clearly show that the Commissioner has, with due application of mind, analyzed the stock position and then came to the conclusion that the proposal made in the show cause notice dated 10.12.1999 cannot be sustained. The order passed by the Commissioner was tested by the tribunal at the instance of the revenue and the tribunal, after taking into consideration the submissions, found that there is absolutely no material in the appeal filed

by the revenue. The impugned order passed by the tribunal is not a single line order, but the tribunal, while confirming the order of adjudication dated 19.10.2005, has assigned independent reasons. Thus, we are of the considered view that the entire issue revolves around facts, which has been considered by the adjudicating authority and the tribunal concurrently against the revenue and in favour of the assessee, and as such, there is no question of law arising for consideration in this appeal much less a substantial question of law.

8. For all the above reasons, the appeal filed by the revenue cannot be entertained and it is dismissed. No costs.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

KST

To

1. The Chief Commissioner of Customs,
   Chennai.

2. M/s.Sujana Steels
   No.18, Nagarjuna Hills, Panjagutta
   Hyderabad - 500 082.

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

+1cc to Mr.T.Pramod Kumar, Advocate, S.R.No. 61037
+1cc to Mr.S.Jai Kumar, Advocate, S.R.No. 60777

AD(CO)
GN(24/09/2018)