In the High Court of Judicature at Madras

Dated : 19.12.2018

Coram :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Civil Miscellaneous Appeal No.2895 of 2018

The Commissioner of Customs,
Trichy-1. ...Appellant

Vs

M/s.PPN Power Generating Company
Ltd., Chennai-34 ...Respondent

APPEAL under Section 130 of the Customs Act, 1962 against the order dated 16.3.2018 in Final Order No.41167 of 2018 in Appeal No.C/31/2011-DB on the file of the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai.

For Appellant : Mr.A.P.Srinivas, SSC

For Respondent : Mr.Hari Radhakrishnan

Judgment was delivered by T.S.SIVAGNANAM,J

This appeal by the Revenue under Section 130 of the Customs Act, 1962 (hereinafter called the Act) is directed against Final Order No. 41167 of 2018 passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai in Appeal No.C/31/2011 dated 16.3.2018.

2. The appeal has been filed by the Revenue by raising the following substantial questions of law :

> "i. Whether the Tribunal is correct in rejecting the Departmental appeal purely on monetary limit fixed by the Board vide Circular F.No.390/Misc./163/2010-JC dated 17.12.2015 without considering the merit of the case while classification disputes are required to be contested on appeal irrespective of monetary limit as per Sub-

Clause 'C' of paragraph 3 of the same circular reiterated by instruction F.No.390/Misc./116/2017-JC dated 25.5.2018 ? and

ii. Whether the Tribunal is correct in dismissing the appeal filed by the Department on the ground of monetary limit in the circular issued by the Board, when there is no request from the Department/appellant/litigant to invoke the said instructions ?”

3. We have heard Mr.A.P.Srinivas, learned Senior Standing Counsel appearing for the Revenue and Mr.Hari Radhakrishnan, learned counsel accepting notice for the respondent - assessee.

4. The appellant is on appeal before us contending that the appeal filed by the Department before the Tribunal is maintainable de hors the monetary limit fixed in the Board's circular dated 17.12.2015, as the issue raised is a recurrent issue. Though the tax effect may be low, the circular has carved out exceptions in certain cases and one such exception pertains to classification dispute.

5. This Court pointed out that this issue can be raised before the Tribunal by filing an application for rectification.

6. However, the learned Senior Standing Counsel appearing for the appellant - Revenue submits that the Tribunal may not be inclined to consider the same, as it may take a stand that it would amount to reviewing its earlier order.

7. Considering the fact that the circular itself carves out certain exceptions, we are of the view that the Department should not be foreclosed from raising such a plea before the Tribunal and if the Tribunal is satisfied that the case would fall within the exceptional circumstances, then the matter needs to be dealt with on merits or otherwise, the Tribunal will be well within its jurisdiction to close the appeal on the ground of low tax effect. We find that the authorized representative, who appeared for the Department before the Tribunal had not specifically pleaded the said point and had it been done, the Tribunal would not have rejected the appeal. However, we do not wish to stand on technicalities. We are of the view that the matter should be remanded to the Tribunal for a fresh consideration.

8. Accordingly, the above civil miscellaneous appeal is allowed, the order passed by the Tribunal is set aside and the appeal is restored to the file of the Tribunal. The Tribunal shall hear the Revenue regarding the contentions that the

dispute raised by the Revenue is a classification dispute and that they are entitled to contest the appeal irrespective of the monetary limit as per Sub-Clause (3) of paragraph 3 of the circular dated 17.12.2015 as reiterated in the instructions dated 25.5.2018. It is also open to the assessee to raise all the contentions before the Tribunal. Consequently, the substantial questions of law are left open. No costs.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To
The Customs, Excise and Service Tax Appellate Tribunal,
South Zonal Bench,
Chennai.

Copy to
The Commissioner of Customs, Trichy 1.

+1 CC to Mr.A.P.Srinivas, Advocate sr 88319.

CMA.No.2895 of 2018

RGN(CO)
SP(28/01/2019)