IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2018

CORAM :

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

CIVIL MISCELLANEOUS APPEAL NO.2900 OF 2018
&
CMP.NO.22076 OF 2018

The Commissioner of Customs
(Preventive), Trichy ...Appellant

Vs

M/s.Sanco Trans Ltd., Chennai-1 ...Respondent

APPEAL under Section 130 of the Customs Act, 1962 against Final Order No.40116 of 2018 dated 17.1.2018 on the file of the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai by restoring the Order-in-Original and allow the appeal arising against the Order No.41204, dated 24.02.2014 passed by the Commissioner of Central Excise, Salem.

For Appellant : Mr.V.Sundareswaran, SPC

For Respondent : Mr.T.Sundaranathan

Judgment was delivered by T.S.SIVAGNANAM,J

This appeal has been filed by the Revenue challenging an order passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai made in Final Order No.40116 of 2018 dated 17.1.2018.

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

> "i. Whether the Tribunal was justified in arriving to decision that no show cause notice has been issued by the DRI, answerable to the then Commissioner of Central Excise, Salem vide show cause notice F.No.VIII/26/181/2007-DRI dated 17.8.2011 ?

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ii. Whether the Tribunal is correct in saying that no personal hearing has been granted to the petitioner whereas Shri Sainathan, Senior Manager of the noticee M/s.Sanco Trans Limited, Chennai, one of the noticees has appeared for personal hearing on 23.1.2014 and furnished his submissions? And

iii. Whether the Tribunal is correct in concluding that it is patent violation of natural justice and the impugned order cannot sustain?"

3. We have heard Mr.V.Sundareswaran, learned Senior Panel Counsel appearing for the appellant and Mr.T.Sundaranathan, learned counsel accepting notice for the respondent.

4. The short issue, which falls for consideration, is as to whether the show cause notice was served on the assessee before commencement of the adjudication, which culminated in the Order-in-Original dated 24.2.2014.

5. In the memorandum of grounds of appeal filed by the appellant, though it is stated that the show cause notice was issued under Section 124 of the Customs Act, 1962, a file number has been given, but there was no averment or proof of service of such show cause notice on the assessee.

6. We are informed by the assessee that the Tribunal had given sufficient opportunity to the Department including the Directorate of Revenue Intelligence to produce proof that the show cause notice was served on the assessee. The Tribunal, in paragraph 3 of the impugned order, recorded the submission of the authorized representative of the Department appeared before the Tribunal that no show cause notice has been issued to the respondent - assessee in the subject proceedings and this submission was made after due instructions were given and after making enquiries with the Department. Therefore, we cannot exercise our power under Section 130 of the Customs Act, 1962 to re-appreciate the factual finding finally decided by the Tribunal - the last Authority, which can appreciate the factual matrix. We find that no substantial question of law arises for consideration in this appeal.

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7. Accordingly, the above civil miscellaneous appeal is dismissed. No costs. Consequently, the connected CMP is also dismissed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

RS

To
The CESTAT, Chennai.

1. The Commissioner of Customs
Preventive, Trichy.

2. The Commissioner of Central Excise,
Salem.

3. The Assistant,
Customs Excise & Service Tax Appellate Tribunal,
South Zonal Bench,
Chennai-06

CMA.No.2900 of 2018&
CMP.No.22076 of 2018

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