BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **29.06.2018**
CORAM:
THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU
AND
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

C.M.A(MD)NO.908 of 2011

M/s.Sree Kaderi Ambal Steels Limited,
Super B-3, Industrial Estate,
Madurai - 625 007. :Appellant/Appellant

.vs.

1. The Customs Excise and
   Service Tax Appellate Tribunal,
   South Zonal Branch,
   26, Haddows Road,
   Chennai-600 006. : Respondent

2. The Commissioner of Customs,
   1- Williams Road,
   Tiruchirappalli - 620 001. :Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 130 of the Customs Act, 1962 against the final order No.448/11, dated 8.3.2011 in A.No.C/354/1999, on the file of the Customs, Excise and Service Tax Appellate Tribunal, South Zone Bench, Chennai-6.

For Appellant :Mr.S.Renganathan

For Respondents 1 and 2 :Mr.R.Nandakumar

JUDGEMENT
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[Judgement of the Court was made by **K.RAVICHANDRABAABU,J.**]

This Civil Miscellaneous Appeal is filed aggrieved against the order passed by the Customs Excise and Service Tax Appellate Tribunal, Chennai, dated 08.03.2011.

2.The appellant is the importer of the subject-matter goods. The short facts which culminated into filing of this Civil Miscellaneous Appeal are as follows:

The appellant is engaged in manufacturing MS ingots by importing the iron and steel scraps as raw materials. They imported the raw materials and cleared the same under concessional rate of duty, availing the duty benefit extended under Notification No.83/90, Customs, dated 20.33.1990. based on the Intelligence Report and on verification of Bills of Entry, Weighment report submitted by the importer for the quantity of scrap received at their factory, it was noticed that 350.759 metric tonnes of iron scraps were imported from May 1996 to February 1998 in 84 imports resulting in evasion of customs duty to the tune of Rs.6,90,328/- and CVD of Rs.4,12,073/-.A show-cause notice was issued on 18.11.1998 by invoking the provisions under Section 28(1) and 124 of the Customs Act by the Commissioner of Customs, Tiruchirappalli. The appellant participated in the adjudication proceedings by filing their reply to the show-cause notice. Consequently, an order in original, dated 29.4.1999 was passed confirming the duty of Rs.5,35,066.48/- also by imposing penalty for equal amount under Section 114-A of the Customs Act, 1962. The importer filed an appeal before the CESTAT in Appeal No.C/354/99. By an order, dated 23.09.2005, the CESTAT though confirmed the duty demand, had however set aside the penalty by holding that any suppression of facts cannot be attributed to the assessee in relation to the excess quantity of scrap. The said order of the Tribunal was put to challenge before this Court in W.P(MD)No.10587 of 2005 by the importer. The said Writ Petition was finally disposed of on 26.10.2010 by setting aside the order of the Tribunal and remitting the matter back to the Tribunal for considering the question as to whether the importer has committed suppression of facts and thereupon to see whether the case falls under 28(1)(b) of the Customs Act or not. The said order passed by the Writ Court was not further challenged and on the other hand, in pursuant to the remand, the Tribunal had taken up the appeal for fresh hearing and thereafter, passed a final order on 08.03.2011 once-again by confirming the duty, by specifically observing that the excess quantity was not declared by the importer to the customs authority and therefore, the extended period of limitation was available as the assessee had suppressed excess quantities with an intention to evade payment of excess duty. However, insofar as the penalty is concerned, the Tribunal, after noticing the fact that the earlier order passed by the Tribunal in setting aside the penalty was not challenged by the Revenue, did not record any finding on that aspect. Thus, the Tribunal partly allowed the appeal upholding the duty liability alone. Challenging the said order of the Tribunal, the present Civil Miscellaneous Appeal is filed.

3.While admitting the Civil Miscellaneous Appeal, the following substantial questions of law were framed:

1.Whether the Appellate Tribunal was justified in holding the extended period would apply in terms of

Section 28(1)(a) of the Customs Act, 1962, in the absence of non-imposition of penalty under Section 114-A of the Customs Act, 1962 when the learned First Respondent recorded a finding that there was no suppression of fact by the appellant company?

2.Whether the First Respondent has correctly applied the law of Limitation in terms of proviso to Section 28(1)(a) of the Customs Act, 1962, or not?

4.The learned counsel for the appellant, after inviting our attention to the earlier order passed by the Tribunal, dated 23.09.2005 and the finding rendered therein that any suppression of facts cannot be attributed to the assessee in relation to the excess quantity of scrap, would submit that the imposition of duty based on a show-cause notice issued by extending the period of limitation cannot be sustained. In other words, it is his contention that in the absence of suppression of facts, attributable to the assessee as found in the order passed by the Tribunal, dated 23.09.2005, the issuance of show-cause notice, dated 18.11.1998, beyond the period of six months, cannot be sustained and based on such show-cause notice, duty cannot be imposed. He further pointed out that the said order of the Tribunal, dated 23.09.2005 was not put to challenge by the Tribunal and therefore, they cannot justify the extended period of limitation in this case.

5.Per contra, the learned Standing Counsel appearing for the respondents submitted that even though the Tribunal has originally passed an order on 23.09.2005, by setting side the penalty with a finding that any suppression of facts cannot be attributed to the assessee, in view of the order passed by the Writ Court in remitting the matter back to the Tribunal once-again to go into the question as to whether the Petitioner has committed suppression of facts or not, the earlier finding rendered by the Tribunal cannot be taken advantage of by the appellant to contend that the Tribunal is not entitled to go into the question of suppression of facts. Therefore, he submitted that the findings rendered by the Tribunal that the assessee had suppressed the import of excess quantity of the goods, to evade payment of duty would show that the extended period of limitation involved in this case is sustainable in the eye of law.

6.Heard both sides. We have perused the materials placed before us.

7.The appellant imported the subject-matter goods and the disputed period is between 7.5.1996 to 28.2.1998.The case of the Revenue is that, during that period, the appellant has imported certain quantity of goods in excess than what was shown in their respective Bills of Entry. Therefore, the Revenue found that the appellant, in order to evade the customs duty, had suppressed the import of the excess quantity of the goods than what was shown in the Bills of Entry.

8.It is true that the show-cause notice was issued on 18.11.1998. It is the case of the appellant before us that the very issuance of the show-cause notice was beyond the period of limitation. But the fact remains that the appellant had participated in the adjudication proceedings by giving their explanation to the show-cause notice without questioning the very jurisdiction or competency of the authority to issue such show cause notice. Moreover, it is seen that the Joint Director of the Company in his statement, dated 30.4.1998 admitted the quantity variation and also stated that they had taken into account only the quantities which were mentioned in the Bills of Entry. Therefore, it is evident that the quantity variation was well within the knowledge of the importer, however, they have not chosen to disclose the same before the Revenue for the purpose of Levying duty. This fact is taken note of by the Tribunal in the present order while sustaining the duty. No doubt, the learned counsel for the appellant strenuously contended that the earlier order passed by the very same Tribunal, having not been challenged by the Revenue, should come to the rescue of the appellant as it was specifically found therein that any suppression of facts cannot be attributed to the assessee in relation to the excess quantity of scrap. We are unable to appreciate such contentions for two reasons.

9.Firstly, the said order of the Tribunal itself was set aside by the Writ Court and the matter was remitted back to the Tribunal for going into the question afresh as to whether the importer has committed suppression of facts and thereupon to decide as to whether the goods falls within 28(1)(b) of the Customs Act or not. Therefore,it is evident that the question, as to whether any suppression of facts was there or not, was left open to be decided to the Tribunal afresh and therefore, what was found in the earlier order by the Tribunal in that aspect cannot be taken advantage of by the appellant. Secondly, a careful perusal of the observation made by the Tribunal in the earlier order would show that there was no suppression of facts at all. On the other hand, it was found by the Tribunal that any suppression of facts cannot be attributed to the assessee in relation to the excess quantity of scrap. Certainly a finding that no suppression of fact exists is different from a finding that any suppression of facts, cannot be attributed to the assessee. Both findings cannot be considered to be under the same footing.

10.In any event, in view of the categorical admission of the assessee's own Joint Director that there was excess quantity and however, they have gone by the Statements made in the Bills of Entry, we do not think that the contention of the appellant that there was no suppression of facts, can be sustained. Therefore, We find no ground or reason to interfere with the order of the Tribunal, as We find that the Revenue has rightly invoked the extended period of limitation under Section 28(1)(b) of the Customs Act and proceeded to adjudicate the matter by issuing show-cause notice. Thus, the Civil Miscellaneous Appeal fails and the questions of law raised in this appeal are answered against the assessee and in favour of the Revenue.

11.Accordingly, the Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

The Customs, Excise and Service Tax
Appellate Tribunal,
South Zone Bench,
Chennai-6.

+1cc to Mr.S.Renganathan, Advocate Sr.No.70645
+1cc to Mr.R.Nandakumar, Advocate Sr.No.70924

VSN

VB/PN/SAR1/13.07.2018/5P/4C

JUDGEMENT MADE IN
C.M.A(MD)NO.908 of 2011
29.06.2018