THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE P.KESHAVA RAO

C.E.A. No.247 OF 2017

JUDGMENT: (*Per* Hon'ble Sri Justice Sanjay Kumar)

This appeal by the Andhra Pradesh State Financial Corporation, Nalgonda, under Section 35 G of the Central Excise Act, 1944 (for short 'the Act of 1944'), arises out of the order dated 12.06.2017 passed by the Customs, Excise and Service Tax Appellate Tribunal, South Regional Bench at Hyderabad (hereinafter, 'the Tribunal'), in Appeal No.E/677/2002-DB. The said appeal was preferred by the appellant herein against the Order-in-Original No.65-2001-HYD-III.ADJN, dated 28.03.2002.

Significantly, the appellant Corporation failed to appear before the Tribunal, but in exercise of its discretion under Rule 20 of the Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982, the Tribunal deemed it fit to decide the case on merits instead of dismissing it for non-prosecution. It may be noted that the appellant Corporation raised as many as eight grounds of appeal before the Tribunal in its challenge to the Order-in-Original dated 28.03.2002.

At this stage, it is also relevant to note that the role of the appellant Corporation in the controversy arose by virtue of the adjudication undertaken by a Division Bench of this Court in W.P.No.6233 of 2001. The said writ petition was allowed by order dated 25.04.2001. The issue before this Court was as to whether the Customs authorities could restrain the petitioner therein, M/s.Vijayalaxmi Enterprises, from lifting the machinery from the Customs Bonded Warehouse on the ground that they had a charge over the said machinery. While so, the machinery in question was also under the charge of the appellant Corporation under Section 29 of the State Finance Corporation Act, 1951, through its loanee, Koratla Textiles Private Limited. In the light of these rival claims, this Court decided that the customs authorities could not restrain the petitioner from lifting the machinery but thereafter observed as follows:

> "We however, do not want to go into the question as regards the liability of the loanee vis-à-vis the State Financial Corporation, as the said question does not arise for consideration in this case. However, having regard to the commitment made by the State Financial Corporation in the sale confirmation letter, it is directed that it shall give an undertaking in writing that in the event in any adjudication proceeding any amount is determined against the loanee, it shall, out of the sale proceeds, pay the same."

In pursuance of this order, the appellant Corporation furnished undertaking dated 27.04.2001 stating as under:

> "This undertaking is being filed into this Hon'ble Court and a copy of the same is also being served upon respondents 3 and 4 reiterating the undertaking given in the sale confirmation letter dated 22.03.2001 that the vendor corporation assures the purchaser i.e., M/s. Vijayalakshmi Enterprises, Hyderabad, to indemnify against any liability, loss or damage caused to the purchaser in connection with the transaction of sale of plant and machinery. The Corporation further undertakes that in the event of any adjudication proceedings any amount is determined against the loanee i.e., Koratla Textiles Pvt. Ltd., the same shall be made over to the respondents 3 and 4 from out of the sale proceeds received by the A.P. State Financial Corporation."

Be it noted that in terms of this undertaking, in the event of any adjudication proceedings against Koratla Textiles Private

Limited, any amount determined was promised to be made over to the customs authorities from out of the sale proceeds received by the appellant Corporation. At this stage, it may also be noted that M/s. Vijayalakshmi Enterprises was the auction purchaser which stepped into the shoes of Koratla Textiles Private Limited, the loanee of the appellant Corporation.

Adjudication having been undertaken by the original authority, viz., the Commissioner of Customs and Central Excise, Hyderabad-III Commissionerate, an opportunity of hearing was given to the appellant Corporation by the said authority as the liability to pay the dues in consequence of such adjudication rested upon it by virtue of the undertaking given by it before this Court in W.P.No.6233 of 2001. Aggrieved by the Order-in-Original dated 28.03.2002 passed by the said original authority, the appellant Corporation preferred the subject appeal before the Tribunal.

Perusal of the order passed by the Tribunal dismissing the appeal reflects that the only fact that weighed upon the Tribunal in doing so was that the appellant Corporation had given an undertaking before this Court that it would bear the duty liability of the assessee vis-à-vis the Customs authorities. Para 6 of the order passed by the Tribunal is relevant in this regard and reads as under:

> "It can be seen from the above reproduced directions of the Hon'ble High Court that the appellant herein had made a commitment before their lordships, that if any amount determined in an adjudication proceedings against the loanee i.e, KTL, it shall, out of the sale proceeds, pay the same. In our considered view, the undertaking given by APSFC, the appellant herein, to the Hon'ble High Court has to be honoured by them and since the impugned order confirms the demand of duty on KTL who is the loanee

> originally, it was the bounden duty of the APSFC to discharge the duty liability to the customs authorities. We do not find merits in the appeal filed by the appellant in contesting the duty liability i.e., confirmed against KTL and sought to be recovered from them as per the undertaking given to the Hon'ble High Court of Andhra Pradesh. On merits, we dismiss the appeal filed by the appellant in contesting the recovery of the amount of duty from them."

We are of the opinion that the understanding of the Tribunal that, having given an undertaking before this Court that it would bear the duty liability, the appellant Corporation was pre-empted from even questioning the finding as to and the quantification of the liability in terms of such adjudication is erroneous. All that the appellant Corporation undertook was to pay the final liability as adjudicated upon but it does not mean that it had no right to challenge the adjudication undertaken in the first instance by the original authority. When it is paying the amount due in terms of such adjudication, to its own detriment, the question of not affording a proper right of appeal to the appellant Corporation would not arise. The Tribunal was therefore incorrect in assuming that having given the undertaking, the appellant Corporation could not contest the duty liability confirmed against Koratla Textiles Limited. The Tribunal, if it was inclined to adjudicate the matter on merits, necessarily had to consider and adjudicate upon all the grounds of appeal raised by the appellant Corporation. As it failed to do so, we are of the opinion that the appeal deserves to be allowed. The matter requires to be adjudicated upon afresh by the Tribunal after giving due notice to the appellant Corporation afresh.

The appeal is accordingly allowed setting aside the order dated 12.06.2017. The matter is remitted to the file of the Tribunal for consideration afresh of the appellant Corporation's appeal against the Order-in-Original on merits and in accordance with law.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

JUSTICE SANJAY KUMAR

Date: 12.02.2018

JUSTICE P.KESHAVA RAO

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