IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

C.M.A.No.3688 of 2011
And
M.P.No.1 of 2011

M/s. Metallie Bellows (I) Pvt., Ltd.,
No. 3/136, East Coast Road
Vettuvankeni
Injambakkam
Chennai – 600 041. ... Appellant/Appellant

Vs.

1. The Customs, Excise and Service Tax Appellate Tribunal
South Zonal Bench, Shastri Bhawan,
No.26, Haddows Road,
Chennai - 600 006.

2. The Commissioner of Customs (Sea Port-Export)
Custom House, New Num 60,
Rajaji Salai,
Chennai – 600 001.
... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 130 of the Customs Act 1962 to set aside the Final Order No. 347/2011 dated 22.02.2011 on the file of the Customs, Excise and Service Tax Appellate Tribunal, Chennai and allow the appeal. Araising against the order of the Commission No.11965/10 dated 03.05.2010 which itself was passed in pursuance of Tribunals Final order no.1743 of 2009 dated 12.11.2009.

For Appellant : Mrs.P.Jayalakshmi
for M/s.Mohammed Shaffiq

For 2nd Respondent : Mr.T.Pramodkumar Chopda
R1 Tribunal

J U D G M E N T
(Delivered by DR.VINEET KOTHARI, J)

The Assessee M/s. Metallic Bellows (I) Pvt., Ltd., has filed the present Appeal aggrieved by the Order of the learned Tribunal dated 22.02.2011 whereby the learned Single Member of the Tribunal rejected the Appeal filed by the Assessee on the ground that the authority below, namely, the Joint Commissioner of Custom House Chennai was justified in not entertaining the subsequently filed documents exercising his discretion under Section 149 of the Act, which if exerised would have allowed the Assessee to establish the fulfillment of the conditions of the Advance licence under which it imported the raw material in question to manufacture the finished products, namely, Metallic Bellows, which were exported with the shipping bills in question. The Assessee intended to file such documents subsequently to satisfy the authority concerned about the fulfillment of the conditions in question. The validity of the subsequently filed documents were not even examined by the concerned authority, but using the discretion of the authority concerned against the Assessee, the said documents were not taken on record.

2. The learned Tribunal upheld that action merely on the ground that the Assessee had experience of making such exports against the Advanced Licence obtained in the year 2004 also and therefore usage of the present Advanced Licence of the year 2006 could not have been said to be without knowledge or experience of such requirement of filing the shipping bills relating them to the particular Advanced Licence in question. It was also contended that the concerned competent authority, namely, the Foreign Trade Development Officer had issued appropriate redemption letters in favour of the Assessee with regard to the said licence which should have satisfied the authorities concerned. These redemption letters were also not taken on record. The said certificates clearly stipulated that the export obligations were made in full value by the Assessee. The redemption letters were issued by another Government Authority and were also not taken on record and into consideration by the concerned Joint Commissioner.

3. Having heard the learned counsels, we are satisfied that the approach of the learned authorities below as well as the learned Tribunal has been narrow and pedantic. They could not take a hyper technical view in the matter and even though a provision like Section 149 of the Act allowed such subsequent documents to be placed on record by the exporter, they have been rejected without assigning proper reasons therefor. The Assessee could have been very well allowed to produce those documents and the validity and veracity of those documents could

have been examined by the concerned authority and if the conditions of the Advanced licence were satisfied with the production of these documents, the authority concerned could have verified and could have allowed the requisite benefit to the Assessee.

4. We are therefore inclined to allow the present appeal and remit the matter back to the concerned assessing authority, namely, Joint Commissioner of Customs for taking on record these documents and consider the case of the Asseessee afresh in accordance with law. The Assessee may produce these documents before the Joint Commissioner within one month from today and the said authority shall consider the same on merits and in accordance with law.

5. The Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

vsg

To

1. The Customs, Excise and Service Tax Appellate Tribunal
South Zonal Bench, Shastri Bhawan,
No.26, Haddows Road, Chennai - 600 006.

2. The Commissioner of Customs (Sea Port-Export)
Custom House, New Num 60, Rajaji Salai,
Chennai - 600 001.

+1cc to M/s.Mohammed Shaffiq, Advocate, S.R.No.45777
+1cc to Mr.T.Pramodkumar Chopda, Advocate, S.R.No.45460

C.M.A.No.3688 of 2011
And
M.P.No.1 of 2011

VGII(CO)
CS/22/08/2019