

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2019

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Civil Miscellaneous Appeal No.3638 of 2013

The Commissioner of Customs,
(Seaport - Export),
Custom House,
No.60, Rajaji Salai,
Chennai-600 001.

... Appellant/Respondent

-vs-

1.M/s.Diamond Engineering
(Chennai) Pvt. Ltd.,
No.179, Rajive Gandhi Salai,
Sholinganallur, Chennai-600 119.

... 1st Respondent/Appellant

2.The Customs, Excise and Service Tax
Appellate Tribunal,
South Zonal Bench,
Shasthri Bhavan Annexe Building,
1st Floor, No.26, Haddows Road,
Chennai-600 006.

... 2nd Respondent

Appeal under Section 130 (1) of the Customs Act, 1962 to set aside the order dated 13.09.2012 made in Final Order No.927 of 2012 in C/150/2012 on the file of the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai.

For Appellant : Mrs.Hema Muralikrishnan,
Senior Panel Counsel

For Respondent-1 : Mr.M.Karthikeyan,
for Mr.S.Jaikumar

JUDGMENT

(Delivered by T.S.Sivagnanam, J.)

This appeal, by the Revenue, is directed against the order in Final Order No.927 of 2012, dated 13.09.2012 passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai (for brevity "the Tribunal").

2.The above appeal was admitted, on 05.02.2014, on the following substantial questions of law:-

"(i) Whether the 2nd respondent tribunal was right in holding that the 1st respondent is entitled to the benefit of the Circular No.36/2010, dated 23.09.2010 and that the period of limitation of 3 months under the said circular is not applicable to the 1st respondent as Section 149 does not impose any period of limitation?

(ii) Whether the 2nd respondent tribunal was right in holding that, though the 1st respondent filed the shipping bills prior to the implementation of the Circular No.36/2010, dated 23.09.2010, the said circular is applicable to the 1st respondent despite the fact that the circular specifically enunciates that the circular shall be applicable only to shipping bills filed on or after the date of issuance of the circular?

(iii) Whether the Tribunal was right in holding that the Circular No.36/2010, dated 23.09.2010 is applicable to the 1st respondent, when Circular 4/2004 dated 16.01.2004 was in force at the relevant point of time when the 1st respondent filed the shipping bills?

(iv) Whether the Tribunal was right in remitting the case back to the adjudicating authority for verifying if the documents filed were in existence at the time of the export, despite the specific finding given by the adjudicating authority that no documentary evidence which was in existence at the time of the export has been produced before him?

(v) Whether the Tribunal was right in remitting the case back to the adjudicating authority for verifying if the documents filed were in existence at the time of the export when no fresh documents, which escaped the consideration by the adjudicating authority were produced before it for consideration?

(vi) Whether the circulars issued by the Central Board of Excise and Customs under Section 151A of the Customs Act, 1962 can be read along with the various provisions under the Customs Act, 1962 during its implementation?"

3.Heard Mrs.Hema Muralikrishnan, learned Senior Panel Counsel for the appellant; and Mr.M.Karthikeyan, learned counsel, for Mr.S.Jaikumar, learned counsel for the 1st respondent/Revenue.

4.The order passed by the Tribunal is remanding the matter for consideration of the adjudicating authority to examine the documents on the basis of which amendment is sought and also to ensure as to whether those documents were available at the time of filing of the shipping bills or not, and if those documents on the basis of which amendment is sought were available at the time of filing of the shipping bills, then the respondent/importer is entitled for conversion of the shipping bills from Advance Licence Scheme to DEPB Scheme.

5.The Revenue has filed this appeal raising the above mentioned substantial questions of law not touching upon the merits of the matter, but as regards the applicability of Circular No.36/2010 dated 23.09.2010.

6.The Tribunal has relied upon the decision of the High Court of Kerala in the case of Leo Tex vs. Union of India, 2012 (281) E.L.T.173 (Ker.) and the decision of the High Court of Karnataka in Commissioner vs. Amritsr Swadesh Textile Corpn. P. Ltd., 2011 (273) E.L.T.A.87 (Kar.).

7.In the light of the above, we are of the considered view that there is no substantial question of law involved in this appeal. Accordingly, the appeal fails and the same is dismissed. No costs.

sd/
ASSISTANT REGISTRAR

/TRUE COPY/

SUB-ASSISTANT REGISTRAR

abr

To

The Customs, Excise and Service Tax Appellate Tribunal,
South Zonal Bench, Shasthri Bhavan Annexe Building,
1st Floor, No.26, Haddows Road, Chennai-600 006.

+1CC to Mr.S.Jaikumar Advocate SR.NO.33108

+1CC to Mrs.Hema Muralikrishnan Advocate SR.NO.33685

C.M.A.No.3638 of 2013

RGN[CO]

MK:08/06/2019