IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.06.2019

CORAM:

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

C.M.A.No.1721 of 2019

M/s.A.K.Paper Products Pvt Ltd,
3-1-763, 'A.K. HOUSE'Ambepet Road
Kacheguda, Hyderabad-500 027. .. Appellant / Appellant

..Vs..

The Commissioner of Customs,
Chennai II Commissionerate
Custom House, No.60, Rajaji Salai,
Chennai 600 001. ..Respondent / Respondent

Prayer : Civil Miscellaneous Appeal is filed under Section 130 of the Customs Act, 1962, against the Final Order No.40030/2019 dated 01.01.2019 in Appeal No.C/42412/2018-DB passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai.

For Appellant : Mr.Hari Radhakrishnan

For Respondent : Ms.Aparna Nandakumar

J U D G M E N T

(Judgment of the Court was delivered by DR.VINEET KOTHARI, J.)

The present Appeal has been filed by the Assessee M/s.A.K.Paper Products Pvt Ltd,against the order of the learned Central Excise & Service Tax Appellate Tribunal dated 10.01.2019 refusing to hear the Appeal filed against the decision/order of the Deputy Commissioner dated 12.04.2016, which conveyed to the Assessee, a clarification issued by the Central Board of Excise & Customs on 22.12.2015, by quoting the same in the said communication dated 12.04.2016.

2. The said clarification was sought by the Departmental authority in pursuance of the directions issued by the Commissioner (Appeals II) vide order dated 27.02.2015. The issue pertains to non mentioning of CTH 4809 in Notification

Nos.127/2011 and 64/2012 dated 30.12.2011 and 31.12.2012 respectively from 01.01.2012 to 18.07.2013, which the learned Commissioner felt could be an inadvertent omission. Therefore, he directed the concerned Departmental authority to seek suitable clarification from the Board.

3. The Central Board of Excise & Customs issued a clarification regarding the same on 22.12.2015 which was conveyed by the Deputy Commissioner of Customs to the Assessee vide impugned communication dated 12.04.2016. The Assessee initially approached this Court by way of Writ Petitions in W.P.No.18828 and 18829 of 2016 which was disposed of by the learned single Judge on 11.09.2018 and the Assessee was again directed to approach the Appellate authority and thereafter the Appellate Tribunal constituted under Section 129 A of the Customs Act and the Assessee thereafter filed an Appeal against the original order of Commissioner (Appeals) dated 27.02.2015.

4. The learned Tribunal passed the order dated 10.01.2019, refusing to entertain the said Appeal on merits.

5. The learned counsel for the Assessee urged before us that the communication dated 12.04.2016 of the Deputy Commissioner of Customs conveying the clarification issued by the Central Board of Excise & Customs on 22.12.2015,was not an adjudicating order and as the original order dated 27.02.2015 was challenged before the Tribunal, the learned Tribunal ought to have considered the Appeal on merits and in accordance with law, deciding the issues raised before it, instead of directing the Assessee to again file appeal before Commissioner (Appeals) against a mere communication dated 12.04.2016 of Deputy Commissioner.

6. The learned counsel for the Revenue however sought to justify the order of the learned Tribunal by stating that the appropriate appellate authority for deciding the appeal against the order/decision of Deputy Commissioner dated 12.04.2016 is the Commissioner (Appeals) and therefore the learned Tribunal was justified in not entertaining the Appeal on merits.

7. Having heard the learned counsel for the parties, we are of the opinion that the Tribunal erred in not entertaining the Appeal on merits. The learned Commissioner (Appeals) vide order dated 27.02.2015 had directed the Departmental authority to seek suitable clarification from the Board, which was done and the Board issued the clarification on 22.12.2015 which was conveyed to the Assessee by Deputy Commissioner of Customs vide Communication dated 12.04.2016. The said communication cannot be said to be an adjudicating order or decision and it does not decide the rights of the parties. Hence, in our opinion, Tribunal ought to have decided the Appeal on merits and in

accordance with law instead of relegating the Appellant to Commissioner (Appeals) again by observing that the appropriate Appellate Authority for any decision/order of the Deputy Commissioner dated 12.04.2016 would only be the Commissioner (Appeals).

8. The Tribunal which is a fact finding body ought to decide the case on merits, taking into account the alleged clarification issued by the Board itself, instead of unnecessarily rejecting the Appeal, by citing such as the aforesaid reason. Hence, we feel that the Tribunal should decide the Appeal on merits and as per law.

9. In view of the same, the present Appeal is allowed and the order of the Tribunal dated 01.01.2019 is set aside, by restoring the appeal back to the learned Tribunal to decide the Appeal on merits and in accordance with law. No costs.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner of Customs,
Chennai II Commissionerate
Custom House, No.60, Rajaji Salai,
Chennai 600 001.

2. The Assistant Commissioner of Customs,
(Grade II), Custom House, Chennai.

3. The Deputy Commissioner of Customs (Group II)
Custom House, Chennai.

4. The Customs, Excise & Service Tax Appellate Tribunal,
Chennai.

+1 cc to Mr.Hari Radhakrishnan, Advocate, S.R.No.44909

C.M.A.No.1721 of 2019

VG-II(CO)
SSM(25/07/2019).