

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATE: 06.08.2019
CORAM
THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.5794 of 2019
&
W.M.P.No. 6624 of 2019

GE T & D India Limited,
Rep. By its Senior Manager - Indirect Taxes S.
Sivaramakrishnan
Grid Automation, Pallavaram Works,
No. 19/1, GST Road, Pallavaram,
Chennai - 600 043. .. Petitioner

Vs.

1. The Assistant Commissioner,
Office of the Assistant Commissioner,
Customs Division,
No. 60, Mohan Singh Street,
Cuddalore - 607 003.
2. Assisstant Commissioner of Central Excise,
Office of the Deputy Commissioner of GST and Central
Excise,
Pallavaram Division, Chennai Outer Commissionerate,
No. 445, Guma Complex I (III Floor), Anna Salai,
Teynampet,
Chennai - 600 018. .. Respondents

Writ Petition is filed under Article 226 of the
Constitution of India, seeking for a Writ of certiorari
calling for the records on the file of the 1st respondent
in Letter C.No.VIII/10/03/2018-Cus.Adj. Dated 20.02.2019
and to quash the same as arbitrary and illegal.

For Petitioner : Mr. Joseph Prabakar

For Respondents : Mr. A.P.Srinivas
Standing Counsel
for Customs and Central Excise

O R D E R

Mr. Joseph Prabakar, learned counsel on record for
writ petitioner and Mr.A.P.Srinivas, learned Standing
Counsel on behalf of both the respondents are before this
Court.

2. Respondents have filed a common counter affidavit dated 20.06.2010 and pleadings are complete.

3. Be that as it may, with consent of both sides, main writ petition itself is taken up, heard out and is being disposed of.

4. Subject matter of main writ petition pertains to classification of some consignments imported by the writ petitioner. Considering the narrow scope on which the instant writ petition now tuns, suffice to say that while according to the writ petitioner importer, the product is 'Relay', according to the Department it is 'Automatic Regulating or Controlling Instruments and Apparatus'. Owing to the aforesaid issue regarding classification, the import of the writ petitioner ran into rough weather resulting in imposition of customs duty, interest and penalty by the original adjudicating Authority, namely Assistant Commissioner, Larger Tax Payer Unit ('LTU' for brevity).

5. Aforesaid order made by the Original Authority was assailed by the writ petitioner by way of a writ petition being W.P.No. 8959 of 2015 and the same was dismissed by a Hon'ble single Judge of this Court on 03.11.2015. It was carried in appeal by way of an intra-court appeal by the writ petitioner. The intra-court appeal is Writ Appeal No.164 of 2016 and a Hon'ble Division Bench of this Court vide an order dated 02.09.2016 admitted the writ appeal and granted interim stay. It is not in dispute that this order of interim stay granted by Hon'ble Division Bench on 02.09.2016 in W.A.No.164 of 2016 is now operating.

6. Under the aforesaid circumstances, the second respondent issued a demand notice calling upon the writ petitioner importer to pay duty along with interest and penalty levied / imposed by the Original Authority. This order/ demand notice is dated 20.02.2019 bears reference C.No. VIII/10/03/2018-Cus.Adj and the same shall hereinafter be referred to as 'impugned notice' for brevity.

7. Respondents have filed a counter affidavit and the learned Revenue counsel submits that the most relevant part of the Revenue's stand is articulated in paragraph 14 of the counter affidavit, which reads as follows:

'14. I submit that in view of the above position, the present case of demand of duty is covered under the category of a Civil case.

Hence, the decision of the Hon'ble Supreme Court in the case of Asian Resurfacing of Road Agency Pvt. Ltd., and Ors. Vs. Central Bureau of Investigation is squarely applicable to the present case pertaining to M/s. GE T & D India Limited, thereby leading to automatic expiry of interim stay granted earlier by this Hon'ble High Court.'

8. To be noted, aforesaid counter affidavit is dated 20.06.2019, but thereafter, the Central Board of Indirect Taxes and Customs (hereinafter 'said Board' for brevity) has issued a circular dated 18.07.2019 bearing reference F.No.1080/2/DLA/Tech/Action Taken/2019/3514 (hereinafter 'said circular' for brevity) and relevant part of said circular is contained in Paragraph 5 and the same reads as follows:

'5. In view of the above, it is brought to the notice of all the field formations that, as directed by CESTAT Bangalore in the order under reference:

(i) That the Judgment of the Hon'ble Supreme Court would apply to cases pending in Trial Courts only. Where any stay has been granted on recovery of revenue by the CESTAT or the High Court, the proper approach would be to file an application for vacation of stay at the appropriate forum and obtain suitable directions of the Tribunal or High Court, as the case may be, before initiating any recovery action; and

(ii) Any instructions to the contrary issued by any Commissionerate to field formations under its jurisdiction on the above issue may be promptly withdrawn.

This issues with the approval of Member (Legal), CBIC.'

9. Having set out Paragraph 5 of the said circular, it is also necessary to set out Paragraph 3 of the impugned notice and the same reads as follows:

'3. In this connection, your kind attention is invited to extracts (Para 3 and 36) of recent order dated 28.05.2018 of the Hon'ble Supreme Court in the case of Asian Resurfacing of Road Agency Private Limited Vs. CBI, reproduced below.

'....in an attempt to remedy this, situation, we consider it appropriate to direct that in all pending cases where stay against proceedings of a civil or criminal trial is operating, the same will come to an end on expiry of six months from today.'

10. It is the specific submission of learned counsel for writ petitioner that paragraph 5 of the said Circular takes the wind out of the sails qua the impugned order. In other words, paragraph 5 of the said circular nullifies Paragraph 3 of the impugned order is his say.

11. As there is no contest regarding the said circular and as the manner in which the said Board has read the order of Hon'ble Supreme Court in Asian Resurfacing of Road Agency Private Limited case, has not been put in issue in the instant case, this Court refrains itself from expressing any view or opinion about the said circular. Having said this, it is made clear that this question is left open to be decided in an appropriate case where there is contest about the manner in which said Board has understood the order of Hon'ble Supreme Court in Asian Resurfacing of Road Agency Private Limited case. It is also to be noted, in the instant case counter affidavit was filed prior to the said circular. While counter affidavit is dated 20.06.2019, said circular is dated 18.07.2019. There is no disputation that the said circular is operating. Therefore, it follows as an inevitable sequitur that impugned notice has to be set aside owing to said circular albeit reserving the rights of the respondents to reissue the said notice in the same manner or in any other appropriate manner subject to the outcome of the matter which now the Hon'ble Division Bench is in seisin vide W.A.No.164 of 2016.

This writ petition is disposed of with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS III)

//True Copy//

Sub Assistant Registrar

To

1. The Assistant Commissioner,
Office of the Assistant Commissioner,
Customs Division,
No. 60, Mohan Singh Street,
Cuddalore - 607 003.

2. Assistant Commissioner of Central Excise,
Office of the Deputy Commissioner of GST and Central
Excise,
Pallavaram Division, Chennai Outer Commissionerate,
No. 445, Guma Complex I (III Floor), Anna Salai,
Teynampet,
Chennai - 600 018.

+1cc to Mr. Joseph prabakar , Advocate SR.No. 67894

+1cc to Mr. A. P. Srinivas , Advocate SR.No. 673933

W.P.No. 5794 of 2019
and W.M.P.No. 6624 of 2019

A.SK(10/09/2019)