IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2019

CORAM :

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

C.M.A.NOS. 1870, 1887, 1888, 1892, 1894, 1895, 1904 OF 2019

C.M.A.NO.1870 OF 2019

COMMISSIONER OF CUSTOMS,
CHENNAI COMMISSIONERATE - II,
CUSTOM HOUSE,
CHENNAI - 600 001.

...APPELLANT IN ALL CMAS

-VS-

M/S.VOLEX INTERCONNECT INDIA PVT. LTD.,
22/1 A, KAZURA GARDEN 1ST STREET,
NEELANGARAI, CHENNAI - 600 041.
TAMIL NADU.

... RESPONDENT IN CMA.NOS.1870/2019

M/S.ASSOCIATE LUMBERS PVT.LTD.
NO.1355/1-B, 200 FEET RING ROAD,
PONNIAMMANMEDU, THIRUVALLUR, TAMILNADU

... RESPONDENTS IN CMA.NO.1887/2019

M/S DOOSAN INFRACORE INDIA PVT.LTD,
SITE 143-B2, B3 AND B4,
BOMMASANDRA INDUSTRIAL AREA I AND II,
HEBBAGODI VILLAGE ATTIBELE HOBI ANEKAL TK,
BANGALORE-560099 KARNATAKA

... RESPONDENTS IN CMA.NO.1888/2019

M/S.OVERSEAS POLYMER PVT LTD,
VINMAR HOUSE, A-41-M.I.D.C. ROAD NO.2
ANDHERI (EAST), MUMBAI-400 093, MAHARASHTRA

... RESPONDENTS CMA NOS. 1892/2019, 1894/19, 1895/2019

M/S PRINCE POLYMER,
21, E.V.K.SAMPATH ROAD, VEPERY, CHENNAI 600 007,
TAMILNADU

... RESPONDENTS IN CMA.NOS.1904/2019

This Civil Miscellaneous Petition is filed under Section 130 of Customs Act, 1962 against the common final order passed by CESTAT in Final Order No.43005 to 43011 of 2018 dated 04.12.2018.

For appellants : Mr.V.Sundareswaran
Senior Standing Counsel
(in all cases)

For Respondents: Mr.Raghavan Ramabadran
(in C.M.A.No.1870 of 2019)

JUDGMENT

(Judgment of the Court was delivered by T.S.Sivagnanam, J.)

These Appeals by the Revenue are directed against the common order passed by the CESTAT in Final Order Nos.43005 to 43011 of 2018 dated 04.12.2018.

2. The Revenue has filed these appeals raising following Substantial Questions of Law:

> "(i) Whether the order of the Tribunal in dismissing the appeal filed by the appellant as barred by limitation is justified and is correct under the statutory provisions of Customs Act, 1962.
>
> (ii) Whether the order of the Tribunal was correct in holding that the order of the Commissioner (Appeals) dismissing the appeals filed by the appellant was barred by limitation ignoring the statutory provisions of the Customs Act, 1962.
>
> (iii) Whether the Tribunal was correct in declining to exercise the statutory power vested under Section 129D(4) r/w Section 123A of the Customs Act, 1962 resulted in miscarriage of justice.
>
> (iv) Whether the Tribunal was correct in not applying the ration laid down by the Hon'ble Apex Court in the case of Thakker Shipping P Ltd., Vs. CC reported in 2012 (285) ELT 321.
>
> (iv) Whether the Tribunal went wrong in ignoring that the limitation of three months for passing review order under Section 129D (2) starts from the date of receipt of the communication of the order of the adjudicating authority by the review cell

and not the date of order, in the light of the Amendment inserted by Finance Act, 2008 (18 of 2008) dated 10.05.2008.”

3. We have heard Mr.V.Sundareswaran, learned Senior Standing Counsel for the appellants in all cases and Mr.Raghavan Ramabadran, learned counsel for the respondent in C.M.A.No.1870 of 2019.

4. The short issue which falls for consideration is whether there is any error in the order passed by the CESTAT confirming the order passed by the Commissioner. The question involved is whether the appeals are within the period of limitation as prescribed under Section 129D of the Customs Act, 1962. Before the Commissioner (Appeals), the Department had filed 17 appeals against the orders in original dated 11.07.2011, 14.07.2011, 15.07.2011 and 18.07.2011. These appeals were transferred by the Commissioner to the call book as the files were not immediately produced and which has been required for considering the limitation as to whether the appeals are untenable and not for deciding the merits of the matter.

5. The Commissioner (Appeals) took note of Section 129D(3) & (4) of the Act and has rendered the following finding and rejected the appeals as time barred and the order reads as follows:

> “From the above, it is clear that the review orders should be passed within three months from the date of communication of the O-In-O and the appeal under Section 129D should be made within a further period one month from the date of communication of the review order. It is seen from table above that, though in many cases the review order itself was seemed to be passed after the stipulated period of three months from the date of communication of the O-In-O. Since, the date of dispatch of the impugned order could not be ascertained with authenticity the delay in such cases were not considered. However, the mandatory requirement of filing an appeal within 1 month was also not followed as it is evident from the above table. There is no condonation provision for the Commissioner (Appeals) for the appeals filed under Section 129D.
>
> In view of the above, without going into the merits of the case, I reject all the appeals as time barred.”

6. The Revenue carried on the matter by way of appeal to the Tribunal. The Tribunal by the impugned order rejected the appeals confirming the order passed by the Commissioner (Appeals). Before us, Mr.V.Sundareshwaran, learned senior standing counsel for the appellant would strenuously contend that there are sufficient records to show that the appeals are not barred by limitation and this Court should pursue the appeal files and examine as to whether the appeals are barred by limitation.

7. In our considered view, such an exercise cannot be done by us in exercise of the jurisdiction under Section 130 of the Customs Act. To be noted, the Commissioner(Appeals), which is a fact finding Authority has rendered a finding that in many of the cases, the review orders have been passed after the stipulated period of 3 months from the date of communication of the order in original since the date of dispatch of the impugned order could not be ascertained with authenticity and the delay in such cases were not considered. The onus is on the appellants that the review orders have been passed within the stipulated time. If the department was unable to discharge such onus, then the consequence has to necessarily follow.

8. The second aspect is whether the appeals have been preferred within the time limit prescribed under the Act. The Commissioner has found that this has not been done. This aspect has been reconsidered by the Tribunal and the appeals filed by the Revenue were rejected. The Tribunal also pointed out that the Commissioner (Appeals) has flagged the number of days of non-condonable delay in each of the cases which has not been disputed by the Department. Therefore, the Tribunal held that they are not inclined to interfere with the order passed by the Commissioner (Appeals). Before us the Department cannot seek for a roving enquiry or for re-adjudication of facts which has been done by the Tribunal.

9. Therefore, we are of the considered view, that the order passed by the Tribunal confirming the order passed by the Commissioner (Appeals) rejecting the appeals on the ground of limitation alone requires to be confirmed and consequently we hold that there is no substantial questions of law arising for consideration in these appeals. We make it clear that we have rejected these appeals only on the ground of limitation and we have not gone into merits of matter which neither Commissioner has gone into nor the Tribunal.

10. In the result, the appeals are dismissed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

TO:

1.COMMISSIONER OF CUSTOMS,
CHENNAI COMMISSIONERATE - II,
CUSTOM HOUSE,
CHENNAI - 600 001.

2.THE COMMISSIONER,
CESTAT, CHENNAI.

+1cc to Mr.V.Sundareswaran, Advocate sr.27785
+1cc to M/s.Lakshmikumaran, Advocate sr.24784

C.M.A.Nos. 1870, 1887, 1888, 1892, 1894, 1895, 1904 of 2019

SSD(CO)
NR 03/07/2019