

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2019

CORAM :

The Hon'ble Mr.JUSTICE Dr.VINEET KOTHARI

AND

The Hon'ble Mr.JUSTICE C.SARAVANAN

C.M.A.No.4335 of 2019
and

CMP No.24646 of 2019

M/s Transaeromarine Imex Solutions Private Ltd,
No.63, 3rd Floor, Om Sri Sai Ram Plaza,
No.75, Thambu Chetty Street,
Mannady,
Chennai - 600 001

.. Appellant/Appellant

-vs-

Commissioner of Customs,
Chennai VIII Commisionerate
Custom House,
No.60, Rajaji Salai,
Chennai - 600 001

.. Respondent/Respondent

Civil Miscellaneous Appeal filed under Section 130 of the Customs Act, 1962 against the Misc.Order No.40562/2019 dated 01.08.2019 in Appeal No.C 42407/2018-DB passed by Hon'ble Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench at Chennai in the matter of Appeal against Order in F.No.R-416/2017-CBS dated 10.09.2018 passed by the respondent.

For Appellant

: Mr.Hari Radhakrishnan

J U D G M E N T

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

The appellant viz.,M/s Transaeromarine Imex Solutions Private Ltd has filed this Civil Miscellaneous Appeal against the Order passed by the respondent viz., Commissioner of Customs, Chennai VIII Commisionerate, Custom House, Chennai, dismissing the stay application filed by the petitioner against

the order dated 10.09.2018, by which, the license of the appellant was suspended.

2. The learned counsel for the petitioner urged that the Tribunal, in paragraph 7 of the impugned order, observed that the order continuing the suspension of the appellant's license is already a subject matter of the Writ Petition in W.P.No.25727 of 2018, whereas, the fact is that W.P.No.25727 of 2018 stood withdrawn on 22.10.2018 with a liberty to approach the Tribunal for consideration of the appeal on merits. Thereafter, the petitioner filed a writ petition in W.P.No.6755 of 2019 against the show cause notice dated 05.11.2018, in which, this Court on 02.04.2019 in W.M.P No.7560 of 2019 in W.P No.6755 of 2019 extended the interim stay already granted to the petitioner on 12.03.2019 but that petition is for different cause and the impugned order of the Tribunal cannot be sustained and the Tribunal should be directed to consider its own merits afresh.

3. Having heard the learned counsel for the petitioner and on perusing the materials available on record, we find considerable force in the contention made by the learned counsel for the petitioner. The Tribunal appears to have proceeded assuming that W.P.No.25727 of 2018 is still pending before High Court, without perusing the order of the High Court in WP No.25727 of 2018, by which, the learned Single Judge of this Court dismissed the writ petition by giving liberty to the appellant to approach the Tribunal and the writ petition was dismissed as withdrawn. Therefore, the very premise of the order of Tribunal as given in paragraph 7 is not correct. Therefore, the present appeal deserves to be allowed.

4. Accordingly, the Civil Miscellaneous Appeal is allowed and the order passed by the respondent in Misc.Order No.40562/2019 dated 01.08.2019 in Appeal No.C 42407/2018-DB is hereby set aside and the matter is remitted back to Customs, Excise and Service Tax Appellate Tribunal, Chennai to consider the stay application, filed by the petitioner, afresh and pass orders on merits and in accordance with law.

5. Since the learned counsel for the appellant submitted that there is no regular bench of CESTAT functioning, a time frame may be fixed to decide the application of the appellant.

6. Accordingly, we direct the Tribunal to dispose of the stay application, filed by the appellant within a period of three months from today. Till then, the operation of the order of the suspension of the appellant's license, as directed by the respondent viz., The Commissioner of Customs dated 10.09.2018

shall remain stayed. Further, the status of the license, after three months shall abide by the fresh order to be passed by the Tribunal.

7. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Commissioner of Customs,
Chennai VIII Commisionerate
Custom House,
No.60, Rajaji Salai,
Chennai - 600 001.
- 2.The Customs, Excise and Service Tax Appellate Tribunal,
South Zonal Bench at Chennai.
- 3.The Commissioner of Customs - VIII(General),
Chennai 600 001.

+lcc to Mr.Hari Radhakrishnan, Advocate, S.R.No. 97299

C.M.A.No.4335 of 2019

NR(CO)
GN(20/12/2019)

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