THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO
And
THE HONOURABLE SRI JUSTICE K. LAKSHMAN

C.E.A. No.48 of 2019

JUDGMENT: *(Per Hon'ble Sri Justice M.S. Ramachandra Rao)*

Heard Sri B. Narayana Reddy, learned Senior Standing Counsel for the appellant.

2. The question which arises for consideration in this appeal is whether the Customs authorities can recover, invoking Rule 8 of the Customs (Import of goods at concessional rate of duty for manufacture of excisable goods) Rules, 1996, short fall in duty paid by an assessee who has been allowed to import goods for a particular purpose, but who did not use it for that particular purpose.

3. Admittedly, the mechanism for recovery of duty not paid or short paid or erroneously refunded is contained in Section 28 of the Customs Act, 1962 (for short 'the Act') which provides to recover the duty within the normal period of one year or extended period of 5 years in case there are elements of fraud, collusion, willful misstatement, suppression of facts etc. But admittedly there is no mechanism under Section 28 of the Act to demand customs duty beyond the period of 5 years even if there is a condition of import which was to be fulfilled and post-importation it was not fulfilled.

4. In the instant case, the order passed by the Commissioner of Customs, Central Excise and Service Tax, Hyderabad

Commissionarate, Hyderabad on 30-09-2009 in Original No.16/2009-CE-HYD-III is an order which seeks to recover under Rule 8, which is not a mechanism for demand of duty. When there is no provision in Section 28 of the Act to recover demands of this nature covered by Rule 8, the appellant cannot be permitted to recover the same.

5. In the impugned order, the Tribunal has also taken the same view, which does not therefore warrant any interference in exercise of the appellate jurisdiction conferred on this Court under Section 35(9) Central Excise Act, 1944.

6. Accordingly, this appeal fails and is dismissed. No costs.

7. Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

JUSTICE K. LAKSHMAN

Date: 06-11-2019
Vsv