IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 27.01.2020

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE R.SURESH KUMAR

C.M.A.No.2446 of 2019

The Commissioner of Customs (Preventive)
No.1, Williams Road, Cantonment
Trichy - 620 001.
... Appellant/ Respondent

-Vs-

M/s.Sri Shipping Services
No.506, MKN Road, Alandur
Chennai 600 016
Also at : 356, Kamarajar Road
Uppilipalayam,
Coimbatore-641 015. ... Respondent/ Appellant

For Appellant : Mr.Rajnish Pathiyil
Senior Standing Counsel
For Respondent : Mr.S.Murugappan

Prayer : Civil Miscellaneous Appeal under Section 130 of the Customs Act, 1962 to set aside the Final Order No.41677 of 2018 dated 26.03.2018 passed by the Customs, Excise and Service Tax Appellate Tribunal,South Zonal Bench, Chennai. Arising out F.NO.12-673/CHA vol II dated 24.08.2010 passed by the Commissioner of Customs (Imports),Chennai.

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 Revenue against the order dated 26.03.2018 passed by the CESTAT, allowing the Assessee's appeal and holding that the impugned order dated 12.08.2011 passed against the Assessee, who was a Customs House Agent (CHA), was hit by limitation as prescribed in the New Regulations (Regulation No.21) of CBLR 2013, eventhough the learned Tribunal referred to amendment of Regulations by

C.B.E & C vide Circular No.9/2010-Cus dated 08.04.2010 in Paragraph 12 of its order. The proceedings initiated under the Old Regulations of 2004, which culminated in the impugned order against the respondent were held to be barred by limitation in view of the later Regulations of 2013. The relevant portion of the Tribunal's order is quoted below for ready reference.

> "14. The Main contention put forward by the learned counsel for the appellant is that Regulation 19 and 20 of the CBLR 2013 prescribed time limit for completion of proceedings. The said provisions are reproduced as under:-
> ....
> ....
> 15. In Necko Freight Forwarders Ltd (supra) , the very issue has been considered. CHALR 2004 was replaced by CBLR 2013. The decisions rendered in the context of CHALR 2004 would be equally applicable to the context of CBLR 2013. In the present case, the adjudicating authority has not complied with the time limit prescribed for passing the order revoking the licence. In various decisions, it has been held that the time limits specified in Regulation 20 CBLR is mandatory. For example, the Hon'ble High Court of Madras in the case of Sanco Trans Ltd Vs. Commissioner of Customs, Chennai 2015 (322) ELT 170 (Mad.) has held that time limit is mandatory.
> 16. Following the said decisions, we have no hesitation to conclude that the impugned order cannot be sustained as it has not complied with the provisions of time limit specified in Regulation 20 before issuing the order of revocation of licence. In such circumstances, we are of the view that the order revoking the licence of the appellant cannot sustain and has to be set aside, which we hereby do. Both appeals disposed of on above terms."

2. Having heard the learned counsel for the parties, we are of the opinion that the Tribunal has misapplied the time limitation prescribed in the New Regulations known as CBLR 2013, whereas admittedly the proceedings against the Assessee M/s.Sri Shipping Services had been initiated under the Old Regulations known as CHALR 2004.

3. Learned counsel for the appellant Revenue brought to our notice the judgment of the learned Single Judge of this Court in the case of "Sri Rajeswari International Vs. Commissioner of Customs, Chennai" reported in 2017 (346) ELT 31, whereas the learned counsel for the respondent Assessee relied upon the

judgment of the Honourable Supreme Court in the case of "Memon Abdul Karim Khaji Tayab Vs. Deputy Custodian General, New Delhi and Ors" reported in AIR 1964 SC 1256.

4. In view of these circumstances, without expressing any opinion by this Court, we are inclined to remand the matter back to the learned Tribunal so that the appropriate case laws in the matter may be considered by the learned Tribunal on the question as to whether the time limits prescribed by the C.B.E & C vide Notification No.30/2010 dated 08.04.2010 can be applied to the facts and circumstances of the present case or not. Apparently, the learned Tribunal has fallen into error in applying the time limits prescribed under the New Regulation on the basis of the judgment delivered by the Delhi High Court in Necko Freight Forwarders Ltd Vs. Commissioner of Customs reported in 2018 (360) ELT 879 (Del).

5. In view of this, the present appeal filed by the Revenue is allowed, setting aside the order of the learned Tribunal dated 26.03.2018. We remand the case back to the learned Tribunal for deciding the case again on merits and in accordance with law, after giving opportunity of hearing to both sides. Both the parties will be at liberty to cite the relevant case laws before the learned Tribunal, which may be considered by the learned Tribunal. The Appeal is allowed accordingly. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

KST
To

1.Customs, Excise and Service Tax Appellate Tribunal,
South Zonal Bench, Chennai.

2.M/s.Sri Shipping Services
No.506, MKN Road, Alandur
Chennai 600 016
Also at : 356, Kamarajar Road
Uppilipalayam,Coimbatore-641 015.

+1cc to Mr.Rajnish Pathiyil , Advocate SR.No. 5777
+1cc to Mr.S.Murugappan , Advocate SR.No. 5510

C.M.A.No.2446 of 2019

A.SK(05/03/2020)