IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.02.2020

CORAM:

THE HONOURABLE DR.JUSTICE VINEET KOTHARI
and
THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

C.M.A.Nos.1605 & 1606 of 2016

M/S. DO BEST INFOWAY
SPACE E NO.92 THE MALL SURYA KIRAN
BUILDING LUDHIANA - 141 002 PUNJAB. ...Appellant in both CMA's

Vs

1 THE COMMISSIONER OF CUSTOMS
CUSTOMS HOUSE
NO.60 RAJAJI SALAI CHENNAI 1.

2 CUSTOMS EXCISE AND SERVICE
TAX APPELLATE TRIBUNAL SOUTH ZONAL BENCH
SHASTRI BHAVAN NO.26 HADDOWS ROAD
CHENNAI ...Respondents in both CMA's

PRAYER: Civil Miscellaneous Appeals filed against Final Order Nos.40343, 40344 of 2016 dated 29.2.2016 in Appeal Nos.C/41061/2015 and C/41062/2015 passed by Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai.

For appellant : Mr.B.Sathish Sundar
M/s.G.Rajagopalan,
Additional solisitor General
assisted by.

For respondents : Mr.B.Rabu Manohar,
Senior Standing Counsel,
for 1st Respondent

COMMON JUDGMENT

(made by DR.VINEET KOTHARI, J.)

The Assessee M/s.Do Best Infoway Space has filed these appeals before this Court under Section 130 of the Customs Act 1962 purportedly raising certain substantial questions of law arising from the order of the learned Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, South Zone, dated 29 February 2016.

2. The learned Tribunal by the impugned order has merely remanded the case back to the Assessing Authority with the following observation:-

> 13. Perusal of the adjudication order throws light that the adjudicating authority summarily disposed of the proceeding without a speaking order. Therefore, he is directed to issue appropriate notice to the importer clearly bringing out allegations if any for the defence of the later and granting reasonable opportunity of hearing shall pass a reasoned and speaking order considering defence plea as well as evidence if any led by the importer.
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> 14. Before parting with this order, it is necessary to inform the Central Board of Excise and Customs (CBE&C) that appropriate guideline may be issued to the quasi judicial authorities in administrative justice system to discharge their duties publicly keeping in view the spirit of the ratio laid down by Apex Court in the case of Gordhandas Bhanji (supra) and in accordance with law. Also the manner how order sheet of public record shall be maintained by such authority while they discharge public duty may be advised.

3. The learned counsel for the Assessee submitted that the appeal filed by the Commissioner of Customs, (Import) Revenue Department before the learned CESTAT itself was not maintainable as the revenue stakes are below the limit prescribed for the litigation policy announced by the concerned Ministry and the said fact was urged before the learned Tribunal in the written submissions filed by the Assessee and therefore, the learned Tribunal should not have entertained the said appeal at all. He further submitted that the Commissioner of Appeals had rightly

passed the order in favour of the Assessee on 28 January 2005, which has been set aside by the learned Tribunal by the impugned order, and the matter has been unnecessarily remanded back to the Adjudicating Authority.

4. Per contra, the learned counsel appearing for the Respondent Department, urged that the order passed by the learned Tribunal is correct in law, and for holding the fresh enquiry in the matter, if the matter has been remanded back to the Assessing Authority, no valid exception can be taken to the same.

5. On the question of litigation policy, the learned counsel for the Revenue submitted that the Assessee cannot insist upon the Revenue to withdraw the Appeal, particularly, when the matter has been decided by the learned Tribunal, and after discussion of the relevant materials, the Tribunal has found it fit to remit the matter to the Assessing Authority.

6. Having heard the learned counsel for the parties, we are satisfied that no question of law, muchless a substantial question of law arises for our consideration in the present case in accordance with Section 130 of the Customs Act, requiring our further consideration. The learned Tribunal, despite the objection raised by the Assessee has considered the case in a detail and has found it fit to remit the matter back to the Adjudicating Authority for holding a fresh enquiry in the matter and then decide the case again.

7. The learned Tribunal has powers to pass such orders on pending appeal before it, "as it thinks fit" and therefore, the power to remand the case back to the Adjudicating Authority is included within the amplitude of powers conferred upon the Tribunal by the Statute. We are not inclined to interfere with the order of the learned Tribunal in any manner. The Assessee obviously cannot insist upon the withdrawal of the Appeal as per the litigation policy announced by the concerned Ministry, which is more in the nature of guidelines for the Revenue Department. It is for the appellant to either withdraw the appeal from the concerned Tribunal or Court or to pursue the same on merits. It does not confer any right on the opposite party to insist upon the withdrawal of the appeal in accordance with such litigation policy. Therefore, the said contention raised by the learned Assessee has no substance. Therefore, we do not find any merit in the present appeals filed by the Assessee and the same are liable to be dismissed. Accordingly, the appeals are dismissed.

No costs. Consequently, the connected miscellaneous appeals are also dismissed.

Sd/-
Assistant Registrar(CS I)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner of Customs,
   Customs House,
   No.60, Rajaji Salai, Chennai - 1

2. Customs Excise and Service Tax,
   Appellate Tribual, South zonal Bench,
   Shastri Bhavan No.26, Haddows Road,
   Chennai - 600006

+1cc to Mr.B.Rabu Manohar, Advocate, S.R.No.14102
+1cc to Mr.B.Sathish Sundar, Advocate, S.R.No.14106

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GMR(CO)
KKV/15/06/2020