IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 11.03.2020
CORAM
THE HONOURABLE MR.JUSTICE R.MAHADEVAN
W.P.No.24043 of 2005
and
WP.MP.No.26196 of 2005 and
WV.MP.No.1166 of 2006

Seven Seas Petroleum Pvt. Ltd.,
2C, Tangy Apartments,
No.6, Dr.P.V.Cherian Crescent,
Off. Commander-in-Chief Road,
Chennai - 600 105.
... Petitioner

Vs.

1. Customs Excise & Service Tax
Appellate Tribunal, South Zonal Bench,
Shastri Bhavan, Chennai 600 034.

2. Commissioner of Customs,
Customs House,
Chennai 600 001.
... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the first respondent in order No.268 to 271 in respect of Appeal C/001456 to C/001458/1998 and quash the final order dated 01.03.2005 insofar as the petitioner is concerned.

For Petitioner: Mrs.Pushya Sitaraman
For R-2 : Mr.M.Santhanaraman,
Senior Standing Counsel

O R D E R

Challenging the order dated 01.03.2005 passed by the first respondent, the petitioner has come up with the present writ petition. In the impugned order, it was held by the Tribunal that demurrage, wharfage and stock loss paid by the assessee to M/s.IOCL in terms of the relevant High Seas Sale Agreements, are liable to be included in the assessable value of SKO (Superior Kerosene Oil) in terms of Rule 9(1)(e) of the Customs Valuation

Rules, 1988.

2.Heard the learned counsel for the petitioner as well as the learned standing counsel for the second respondent. They submitted that the issue involved herein is covered by the decision rendered in MGM International Export v. CESTAT, Chennai [2011 (273) E.L.T. 371 (Mad.)], wherein the Division Bench of this Court has decided the issue in favour of the assessee. For better appreciation, the relevant portion of the said decision is extracted hereunder:

> "2.The appeal arises against the order dated 4-3-2005 passed by the Customs, Excise and Service Tax Appellate Tribunal, Chennai, before which, the question to be decided was as to whether the demurrage, wharfage and stock loss charges paid by the appellant to the Indian Oil Corporation are liable to be included in the assessable value in terms of Rule 9(1)(e) of the Customs Valuation Rules, 1988 and the Tribunal took the view by the versus one that the charges will be included in the assessable value.
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> 3.According to the appellant, this was clearly contrary to the judgment of the Supreme Court reported in the case of Commissioner of Customs, Calcutta v. Indian Oil Corporation Limited [AIR 2004 SCC 2799 = 2004 (165) ELT 257 (SC)]. The appellant therefore filed a writ petition and the learned Single Judge has dismissed the writ petition on the ground that the remedy of statutory appeal is available to the appellant under section 130 of the Customs Act. Being aggrieved by that, this appeal has been filed.
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> 4...
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> 5.As against the aforesaid submission, Mr.E.Vijay Anand, learned counsel appearing for the respondents submits that though the proposition of the appellant is not disputed, as stated in paragraph 5 of the order, the learned Single Judge was right in dismissing the writ petition for not exhausting the correct remedy.
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> 6.We see good merit in the submission of Mr.Vijay Anand, learned counsel appearing for the respondents that the writ petition will not be normally entertained whenever an alternative remedy is available. Again there is no dispute with the submission nor with the proposition as accepted by the learned single judge.

7.However, in the facts of the present case, where three members of the Tribunal had differed with each other learned Single Judge could ha e exercised the discretion and allowed the writ petition. It is only for this reason, we allow this appeal and set aside the order passed by the learned Single Judge as also the order passed by the Tribunal and directed respondent No.2 not to include the demurrage, wharfage and stock loss charges into assessable value of the appellant. With these observations, the writ appeal is disposed of. Consequently, the connected miscellaneous petition is closed. However, there shall be no order as to costs."

3.Following the aforesaid decision, which holds good to the facts of the present case, this Court is inclined to set aside the order impugned herein. Accordingly, the order dated 01.03.2005 passed by the first respondent is set aside. The second respondent is directed not to include the demurrage, whargage and stock loss charges into assessable value of the petitioner.

4.Accordingly, this writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

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To

1. Customs Excise & Service Tax,
Appellate Tribunal, South Zonal Bench,
Shastri Bhavan, Chennai 600 034.

2. Commissioner of Customs,
Customs House,
Chennai 600 001

+1 cc to M/s.S.Rajasekar Advocate sr21977
+1 cc to M/s.Pushya Sitaraman Advocate sr21582

W.P.No.24043 of 2005

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