IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2020

CORAM:

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

C.M.A.Nos.1346 of 2014 and 183 to 190 of 2013

C.M.A.No.1346 of 2014 and C.M.A.183 to 190/2013

The Commissioner of Customs,
Custom House,
New Harbour Estate,
Tuticorin 628 004 ...Appellant/Respondent (in all C.M.As)

Vs

1.Customs, Excise & Service Tax Appellate Tribunal,
South Zonal Bench, Shastri Bhavan,
No.26, Haddows Road, Chennai 6

2.M/s.Sterlite Industries India Ltd.,
SIPCOT Industrial Complex,
Madurai Bypass Road,
TV Puram,
Tuticorin 628 002 ...1st and 2nd Respondents(in all C.M.As)

PRAYER: Civil Miscellaneous Appeal filed to set aside the final Order No.40485/2013 No. 1522/2007, 1523/2007, 1524/2007, 1525/2007, 1526/2007, 1527/2007, 1528/2007 & 1529/2007 dated 29.10.2013 dated 25.12.2007 passed by the Customs, Excise & Service Tax Appellate Tribunal, South Zonal Bench, Chennai.

For Appellant : Mr.V.Sundareswran,
Sr. Standing Counsel

2nd Respondent : Mr.N.Viswanathan,
for 2nd Respondent (in all C.M.As)

1st Respondent : Tribunal(in all C.M.As)

COMMON JUDGMENT
(made by DR.VINEET KOTHARI, J.)

The Revenue has filed these Appeals against the order of the learned Customs, Excise & Service Tax Appellate Tribunal, South

Zonal Bench, Chennai dated 29 October 2013 whereby the learned Tribunal, following its earlier decision held that in view of the insertion of the provisions in Section 18(3) of the Customs Act, 1962, w.e.f. 13 July 2006, making a provision for imposition of interest on the difference of duty upon final assessment made by the Assessing Authority, for the period prior to the amendment in law, viz., w.e.f. 13 July 2006, no interest could be levied by the Assessing Authority under Section 18(3) of the Act. The relevant portion of the order of the learned Tribunal is quoted below for ready reference :

> 5. On a plain reading of Section 18(3), it is clear that interest is payable on the provisional assessment of duty "from the first day of the month in which duty is provisionally assessed till the date of payment". In the present case, duty was provisionally assessed during the period from April 2005 to February 2006 when there was no provision for payment of interest under Section 18 of the Customs Act. We find that the Tribunal in the appellant's own case as reported in : 2008 (223) ELT 633 held that as provisional assessment was prior to 13.7.2006, interest would not be levied by invoking Section 18(3) of the said Act. In the case of Raj Petroleum Products Ltd. (supra), it has been held as under: -
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> Considered the submissions made by both sides. Prior to 13.7.2006 there were no provision for demand of interest on differential duty on finalization of provisionally assessed Bill of Entry. The provision came in force with effect from 13-7-2006 and the same is applicable on the imports made after 13-7-2006. Admittedly, in this case, imports have been made during the period 1999-2003; therefore, the provision of Section 18(3) of the Customs Act, 1962 for demand of interest is not applicable in this case. Accordingly, the demand of interest is waived and the appeals are allowed.
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> In the case of Chemsilk Commerce (supra), it has been held as under :-
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> 4. After hearing both sides and considering the facts of this case, we find that the valuation declared by the Appellants has not been accepted by the Department but on the basis of a thorough

enquiry and study of comparable goods imported by others, the higher valuation has been adopted. At the same time, we find that no incriminating evidence have been found nor any duplicate invoices or suppression of invoices etc. are involved in this case. Therefore, while confirming the differential duty demand which has been made on the basis of comparable prices, we waive confiscation of the imported goods, imposition of redemption fine and penalty in this case. As regards the order of the Adjudicating Commissioner, in page 14 that differential duty along with interest should be adjusted from the bank guarantee, we find that the goods were initially assessed provisionally at the declared valuation on execution of bond and bank guarantee and since as pointed out by Shri Mehta there was no provision under Section 18 of the Customs Act 1962 at the material time for demand of interest in respect of provisional assessment cases, we hold that the Adjudicating Commissioner is not justified in ordering demand of interest on the differential duty payable."

7. After considering the above decisions and the facts of the present case, we find that the demand of interest under Section 18 (3) is not sustainable prior to 13.7.2006. The learned AR relied on various decisions of the Hon'ble Supreme Court but none of the cases relate tot he demand of interest in the context of Section 18(3) of the Customs Act. In the case of SKF India (Supra), the demand of interest is on price revision on the supplementary invoice under Section 11AB of the Central Excise Act. In the case of International Auto (Supra), earlier decision of SKF India (supra) was followed on the same issue. In the case of Pratibha Processors (supra), the Hon'ble Supreme Court considered the demand of interest on warehoused goods.

8. In view of the above discussions, we set aside the impugned order and allow the appeal with consequential relief, if any.

2. The learned counsel for the Revenue though relied upon the decision of the Hon'ble Supreme Court in the case of Steel Authority of India Ltd. vs. Commissioner Central Excise, 2019(6)

SCC 693, we do not find any applicability of that judgment in the present case as the said judgment appears to have been delivered on the interpretation of Section 11A of the Act.

3. On the other hand, the learned counsel for the Assessee relied upon the judgment of the Gujarat High Court in the case of Commissioner of Customs (Preventive) vs. M/s.Goyal Traders, 2011 TIOL 568 HC AHM Cus, in which, dealing with the same controversy which is involved in the case in hand before us, the Division Bench of Gujarat High Court held that for the period prior to 13.07.2006, no interest can be levied under section 18 (3) of the Act on such differential duty assessed upon final assessement. The relevant portion of the said judgment is quoted below for ready reference :-

> 16. Particularly, in fiscal legislation imposing liabilities generally governed by the normal rule is that it is not retrospective in nature. It is, however, equally undisputed that a procedural provision when made applicable to pending proceedings would not be viewed as given retrospective operation to the liability. In case of Govinddas and ors. Vs. The Income Tax Officer and anr. 1977 Supreme Court 552, the Apex Court was considering provision of Section 171 of Income Tax Act, 1961, in which the legislature under sub-section (6) provided that even when no claim of total or partial partition is made at the time of making assessment under Section 143 or 144 of the Act, if it is found after the completion of assessment that the family has already effected as partition, total or partial, all the members shall be jointly and severally liable for the tax as payable by the joint family and the tax liable shall be apportioned among the members according to the portion of the joint family property allotted to each of them. The Apex Court was of the opinion that sub-section 6 of Section 171 thus, for the first time, imposed in the case of this kind joint and several liability on the members for the tax assessed on Hindu Undivided family and thus was personal liability as distinguished from the liability limited to the joint family property received on partition. The Apex Court thereupon held and observed that:
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> “We cannot, therefore, consistently with the rule of interpretation which denies retrospective operation to a statute which has the effect of creating of imposing a new obligation or liability, construe sub-section

(6) of Section 171 as embracing a case where assessment of a Hindu undivided family is made under the provisions of the old Act. Here in the present case, the assessments of the Hindu Undivided Family for the assessment years 1950-51 to 1956-57 were completed in accordance with the provisions of the old Act which included Section 25A and the Income Tax officer was, therefore, not entitled to avail of the provision enacted in sub-section (6) read with sub-section (7) of Section 171 of the new Act for the purpose of recovering the tax or any part thereof personally from any members of the joint family including the petitioners."

17. In the present case, we find that prior to introduction of sub-section (3) of Section 18 of the Act in the present form, there was no liability to pay interest on difference between finally assessed duty and provisionally assessed duty upon payment of which the assessee may have cleared the goods. It was only with effect from 13.07.2006 that such charging provision was introduced in the statute. Upon introduction therefor such provision created interest liability for the first time w.e.f. 13.07.2006. In absence of any indication in the statute itself either specifically or by necessary implication giving retrospective effect to such a statutory provision, we are of the opinion that the same cannot be applied to cases of provisional assessment which took place prior to the said date. Any such application would in our view amount to retrospective operation of the law.

4. In view of the aforesaid and having heard the learned Counsel for the parties, we are satisfied that prior to amendment of law, by insertion of Section 18(3) of the Act in the Customs Act, the Revenue could not demand any interest on the differential duty assessed upon final assessment where the goods have been cleared on provisional assessment under Section 18(1) of the Act. The retrospective levy is not intended and the amendment in Law is a substantive provision for making a provision for levy of interest in the present case. Therefore, for a period prior to 13.07.2006, such levy of interest cannot be imposed on the Assessee. Therefore, being in respectful agreement with the view of the Gujarat High Court, we do not find any merit in the present appeals filed by the Revenue and the order passed by the learned Tribunal is correct.

5. The appeals filed by the Revenue are devoid of merits and the same are liable to be dismissed. Accordingly, the appeals are dismissed. No costs. Consequently, M.P.Nos.1/2014 are also dismissed.

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

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To

1.The Commissioner of Customs,
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New Harbour Estate,
Tuticorin 628 004

2.Customs, Excise & Service Tax Appellate Tribunal,
South Zonal Bench, Shastri Bhavan,
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+1 CC to Mr.V.Sundareswran, Advocate sr 9578.
+1 CC to Mr.N.Viswanathan, Advocate sr 9325.

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GMR(CO)
SP(05/03/2020)