

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	21.09.2020
Pronounced on	01.10.2020

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.Nos.2623 & 2624 of 2018
and
W.M.P.Nos.3248 & 3249 of 2018

M/s.Jumbo Bags Ltd.,
75, Thatchurkootu Road,
Panjetty Village, Ponneri Taluk,
Thiruvallur District - 601204.
By its Managing Director
Mr.G.S.Anil Kumar ...Petitioner in both WPs

Vs

1. The Deputy Commissioner,
Office of the Deputy/Assistant
Commissioner of GST &
Central Excise, "Ponneri Division",
Chennai-Outer Commissionerate,
37/R-40, A-1, 100 Feet Road,
Mogappair, Chennai - 600037.
2. The Maritime Commissioner,
Office of the Principal Commissioner of
CGST & Central Excise,
Export Claims Section,
Chennai North Commissionerate,
26/1, Mahatma Gandhi Road,
Nungambakkam, Chennai - 600034.
3. The Commissioner of GST &
Central Excise,
Chennai North Commissionerate,
Anna Nagar, Chennai - 600040. ...Respondents in both WPs

Prayer in W.P.No.2623 of 2018: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records connected with show cause notice dated 27.10.2017 in C.No. V/63/18/13/17-EC issued by the

2nd respondent herein, viz., The Maritime Commissioner, Chennai North Commissionerate and quash the same in so far as the said show cause notice had been issued in total violation to the principles of natural justice, without jurisdiction and in excess of the authority conferred on the said respondent.

Prayer in W.P.No.2624 of 2018: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records pertaining to the demand/recovery notice dated 16.05.2017 in C.No. IV/16/19/2017 issued by the 1st respondent herein, viz., The Deputy Commissioner of Central Excise, E-Division, Chennai I Commissionerate and quash the same in so far as the said demand/recovery notice had been passed in total violation to the principles of natural justice, without jurisdiction and in excess of the authority conferred on the said 1st respondent and as against the judgment delivered by the Hon'ble Supreme Court of India vide its order dated 05.08.2017 Commissioner -vs- Jumbo Bags Ltd. - 2015 (324) ELT A190 (S.C.) which has dismissed the appeal of the department, thereby setting the issue in favour of the petitioner.

For Petitioner : Mr.N.Viswanathan
(in both WPs)

For Respondents: Mr.A.P.Srinivas, SSC
(in both WPs)

COMMON ORDER

The Writ Petitions were called through Video Conferencing on 21.09.2020. By consent of both the parties, both these Writ Petitions are taken up for final disposal.

2. By placing reliance on Customs Notification No.125/84-C.E., the petitioner claimed exemption from payment of duty against the sales effected by them against the Domestic Tariff Area (DTA) against foreign exchange. The Revenue rejected the claim, holding that the petitioner is liable to pay the duty demanded. The challenge made to the rejection before the adjudicating authority and the Commissioner of Appeals were unsuccessful. Consequently, in the appeal before the CESTAT reported in 2005 (184) ELT 214 in the case of Jumbo Bag Ltd. v. Commissioner of Central Excise, Chennai, it was held that the duty demand was not sustainable and the Commissioner was in error in invoking Notification No.2/95 for demanding excise duty. The Revenue had challenged the order of CESTAT before the Hon'ble Supreme Court and by an order dated 05.08.2015, it was held as follows:-

"We find that the matters are covered against the Revenue by the Judgment of this Court in 'Commissioner of Central Excise, Jaipur v. Ginni International Limited' [(2001) 15 SCC 227 = 2007 (215) E.L.T. A102(S.C.)] The appeals are, accordingly, dismissed."

3. The 1st respondent in the impugned notice dated 16.05.2017, accepted the fact that the petitioner is entitled to interest on Rs.2,72,466/- towards the belated refund of pre-deposit of Rs.25,00,000/-. However, this amount was set off against another demand issued by the 2nd respondent, by interpreting the decision of the Hon'ble Supreme Court in the petitioner's own case and holding the petitioner liable to pay duty for the clearances effected during the period September 1999 to September 2001 and thereby proceeded to pre-determine the duty liability as per the decision of the Hon'ble Supreme Court in the case of Virlon Textile Mills Ltd. v. Commissioner of Central Excise reported in 2007 (211) ELT 353(SC).

4. The learned counsel for the petitioner submitted that when the CESTAT had passed final orders dated 29.08.2016, holding that the Judgment of the Hon'ble Supreme Court is against the Revenue, the earlier decision of the Tribunal merges with that of the Judgment of the Hon'ble Supreme Court and therefore, the Revenue is not justifiable in interpreting the Hon'ble Supreme Court's order.

5. The learned Senior Standing Counsel appearing for the 1st respondent relied on the averments made in the counter affidavit and stated that in the case of Virlon Textile Mills Ltd. (supra), there was no issue regarding the applicability of duty liability to sales, but the dispute with regard to the quantum of duty applicable.

6. The writ petitions are on a very narrow campus as to the effect of the dismissal of the appeal by the Revenue. The Tribunal, in the petitioner's case reported in 2015 (184) ELT 214, had held that the supplies made are not covered by Notification No.2/95 at all and the Commissioner was in error in invoking Notification No.2/95, for the purpose of demanding excise duty. The Revenue's appeal before the Hon'ble Supreme Court was dismissed, in view of the earlier decision of the Hon'ble Supreme Court in Ginni International Limited (supra). The notable wordings of the Hon'ble Supreme Court is that the matter before them are covered "against the Revenue", in view of Ginni International Limited (supra) and "accordingly" dismissed.

7. Incidentally, the petitioner had earlier claimed pre-deposit made by them for availing their right of appeal before

the CESTAT and when the amount was paid belatedly, they had claimed interest on the same, which came to be refunded by both the original authority and the Appellate Commissioner. As against the rejection, they had preferred an appeal before the CESTAT. The Tribunal, in its order dated 29.08.2016, had rightly rejected the Revenue's claim, holding that the order of the Tribunal had merged in the dismissal order of the Hon'ble Supreme Court and therefore, the CESTAT has no jurisdiction to touch upon the merits of the case again and there is no further scope for the Revenue to open its case. In these proceedings before the CESTAT, Revenue had raised grounds touching upon the decisions of Ginni International Limited (supra) and Virlon Textile Mills Ltd. (supra). In the present case, a similar attempt is made by the department to distinguish the order of the Hon'ble Supreme Court in the petitioner's own case.

8. It is rather unfortunate that these Quasi Judicial Authorities have disregarded the underlying principle of judicial decisions and its binding effect. When the Hon'ble Supreme Court had rejected the appeal of the Revenue, the order of the Tribunal, which was in favour of the importer, merges with the order of the Hon'ble Supreme Court, under the principle of 'Doctrine of Merger'. The attempt on the part of the Revenue to interpret the order of the Hon'ble Supreme Court and attempting to give life to the claim, which they had lost before the Hon'ble Supreme Court, is nothing, but an act, which could be termed as an act of contempt of the Hon'ble Supreme Court's order. Judicial discipline mandates Quasi Judicial Authorities to extend sanctity to the binding precedents, more so, when such orders are from the highest Court of the Country. This Court expresses its disappointment on the conduct of the concerned authorities in having scant respect towards the orders of the Hon'ble Supreme Court.

9. For all the foregoing reasons, I am of the view that the petitioner is entitled to succeed. Accordingly, both the impugned orders dated 27.10.2017 and 16.05.2017 are quashed and the Writ Petitions stand allowed. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

hvk/DP
To

1. The Deputy Commissioner,
Office of the Deputy/Assistant
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Anna Nagar, Chennai - 600040.

+1 cc to M/s.A.P.Srinivas, Advocate Sr.No. 32415

W.P.Nos.2623 & 2624 of 2018
and
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BS (CO)
RMP (15/10/2020)

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