IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 9.1.2020

CORAM

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

C.M.A.Nos.4865 to 4868 and
4873 to 4877 of 2019
and
C.M.P.Nos.28023, 28028, 28031, 28033, 28043,
28044, 28045, 28048 and 28054 of 2019

M/s.KCP Limited
rep. by its Chief Financial Officer (CFO)
P.B.No.2278, Thiruvottiyur,
Chennai 600 019.
Tamil Nadu. Appellant

Versus

The Commissioner of
Central Excise
Chennai Commissionerate-I,
121, Nungambakkam High Road,
Chennai 600 034. Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 35G of Central Excise Act, 1944 against the Final Order Nos.41661 to 41669 of 2018 dated 31.5.2018 in Appeal Nos. Nos.E/41435/2017-DB to E/41443/2017-DB, passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai.

For Appellant : Mr.S.R.Raghunathan for
Mr.C.Manickam

For Respondent : Mrs.Hema Muralikrishnan

COMMON JUDGMENT
(Judgment of the court was made by Dr.VINEET KOTHARI, J.)

The same order of the learned CESTAT in Final Order Nos.41661 to 41669 of 2018 dated 31.5.2018 in Appeal Nos. Nos.E/41435/2017-DB, E/41435/2017-DB, E/41435/2017-DB, E/41435/2017-DB, E/41435/2017-DB, E/41435/2017-DB and E/41435/2017-DB, which is now impugned before this court, had been subjected to Appeal before the Hon'ble Supreme Court by the Assessee, under Section 35L of the Central Excise Act, 1944 in Civil Appeal Diary No.35105 of 2018, which came to be dismissed by the Hon'ble Supreme Court on 2.11.2018 with the following order:-

> "Delay condoned.
>
> We see no merits in these appeals.
>
> The Civil Appeals are, accordingly, dismissed.l
>
> Pending applications, if any, stand disposed of."

2. The Review Petitions filed by the Assessee in R.P.(C) Nos.570 to 578 of 2019 also came to be dismissed by the Hon'ble Supreme Court on 9.4.2019, with the following order:-

> "Application for oral hearing is dismissed.
>
> Delay condoned.
>
> We have carefully gone through the Review Petitions and the connected papers filed therewith. We do not find any ground, whatsoever, to entertain the same. The Review Petitions are, accordingly, dismissed."

3. The present Appeals came to be filed by the same Assessee against the same order under Section 35G of the Central Excise Act in this court on 27.9.2019, which, again wrongly labelled as Section 130 of the Customs Act, 1962.

4. We express our dismay and dissatisfaction on the quoting of the wrong provision by the responsible official of the Assessee Company, however, we intend to leave it at that.

5. Since the provisions of the Central Excise Act, 1944 and the Customs Act, 1962 are in pari materia in this regard, the question relating to the rate of Duty or valuation can be appealed before the Hon'ble Supreme Court under the provisions of Section 35L under the Excise Law and under Section 130E(b) of the Customs Act, whereas in respect of other questions of law, Appeals can be maintained before the High Court under Section 35G of the Central Excise Act or under Section 130 of the Customs Act, 1962. We are of the opinion that once the Appeals have been preferred against the same order of the learned CESTAT before the Hon'ble Supreme Court, presumably, being fully aware that the question of rate of Excise Duty and valuation of the goods are involved in the matter and those Appeals having been dismissed by the Hon'ble Supreme Court and the Review Petitions also having been dismissed, it leads no scope open to the Assessee to maintain any Appeal before the High Court resorting to appeal under Section 35G of the Central Excise Act or Section 130 of the Customs Act before the High Court.

6. We make it clear that the Customs Act, 1962 is not at all involved in the present case and therefore, the wrong quoting of the provisions, whether it is bona fide or inadvertent mistake, cannot be appreciated. It is more so because Section 35L, under which an Appeal to the Hon'ble Supreme Court is provided for on the question of rate of duty or valuation, sub-section (2) of Section 35L provides for the determination of any question having relation to the question of Duty, and therefore, the Hon'ble Supreme Court may consider the question of any other issue for the purpose of assessment and therefore, the issues other than the rate of Duty or valuation can also be determined by the Hon'ble Supreme Court in the Appeal filed under Section 35L of the Central Excise Act and therefore, with the dismissal of Appeal by the Hon'ble Supreme Court in the present case, the order of the learned Tribunal had acquired finality at the hands of the Hon'ble Supreme Court.

7. Therefore, we cannot permit any issue to be raised before this court just by labeling the Appeal now under Section 35G of the Central Excise Act, as if the same order of CESTAT can be again assailed by an Appeal under the provisions of Section 35G of the Central Excise Act raising certain questions. The Appellant is estopped from doing so by the principles of res judicata as well as constructive res judicata.

8. In view of the above, we have not permitted the learned counsel for the Assessee to make any submission on the merits of the case and dismiss the present Appeals as not maintainable. We have not imposed costs though we express our dismay at such misuse of process of law and Court's process by the Assessee. Consequently, the connected Miscellaneous Petitions are also dismissed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

ssk.

To:

1. The Commissioner of
Central Excise
Chennai Commissionerate-I,
121, Nungambakkam High Road,
Chennai 600 034.

2.The Customs Excise and Service Tax Appellate Tribunal
Sasthri Bhavan Annexe Building
Haddows Road, Chennai 600 006.

+1 CC to M/s. Hema Muralikrishnan, Advocate sr 2489
+9 CCS to Mr.S.Shyam Kumar, Advocate sr 3100 to 3108.

C.M.A.Nos.4865 to 4868 and
4873 to 4877 of 2019

CNR(CO)
SP(20/02/2020)