IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.02.2021

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MS.JUSTICE R.N.MANJULA

C.M.A.NO.3427 OF 2008
AND
M.P.NO.1 OF 2008

Commissioner of Customs (Exports),
Customs House, Chennai. ...Appellant

Vs

1. M/s.Altec Corporation Limited,
   No.51, 4th Floor, Kodali Towers,
   Transport Road, Sikh Village,
   Secunderabad - 500 009.
   (cause title amended vide order
   dated 22.10.2010 made in
   M.P.No1 of 2010)

2. Sri.V.Vidyasagar, Managing Director,
   M/s.Jayakrishna Aluminium Ltd.,
   Secunderabad - 500 003

3. Customs, Excise and Service
   Tax Appellate Tribunal,
   South Zonal Bench,
   Shasthri Bhawan Annexe, 1st Floor,
   26, Haddows Road, Chennai - 600 006. ...Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 130(a) of the Customs Act, 1962 read with Rule 8 of Customs (Appeals) Rules 1982 to set aside Final Order No.665 of 2005 dated 27.04.2005 passed by the Customs, Excise and Service Tax Appellate Tribunal, Southern Regional Branch, Chennai - 600 006 in C/906/1997 and against the order of the Commissioner of Customs, Custom House, Chennai-1, dated 24/06/1997 and made in Order in original No.103/97.

For Appellant : Mr.A.P.Srinivas
Senior Standing Counsel
For Respondents : No Appearance for R1 & R2
R3- Tribunal

JUDGMENT
(Delivered by T.S.Sivagnanam,J)

This appeal, filed by the appellant-Department, is directed against the order dated 27.04.2005 made in Final Order No.665 of 2005 passed by the Customs, Excise & Service Tax Appellate Tribunal, Southern Regional Branch, Chennai ('the Tribunal' for brevity).

2. The appellant-Department has filed this appeal by raising the following substantial questions of law:

> "1. Is the Learned Appellant Tribunal correct in setting aside the confiscation and on the imposition of Redemption Fine and interest on the duty thereon, when admittedly the respondents had not utilized the duty free materials for manufacturing of Aluminium Extrusions that were sold in domestic market, in violation of the conditions of the exemption notification & thereby rendering the goods liable for confiscation under Sec.111(d) & (o) of the Customs Act, 1962?
>
> 2. Is the Tribunal correct in setting aside the interest and penalty imposed on the 2nd respondent when he had admittedly on the role of the Managing Director in the misuse of DEEC Scheme committed by the firm was well established by the Department?"

3. We have heard Mr.A.P.Srinivas, learned Senior Standing Counsel appearing for the appellant.

4. The Tribunal, by the impugned order, had remanded the matter back to the Assessing Officer to verify the claim made by the assessee that they exported over 14 tonnes of goods with the imported aluminium ingots, which were cleared by the respondent through the customs, without payment of duty under the DEEC Scheme.

5. We find from the order passed by the Tribunal that there was no material available with the Department at the relevant point of time to rebut the plea raised by the assessee that they exported over 14 tonnes utilizing the imported material, which were cleared without payment of duty under the DEEC Scheme. Therefore, the Tribunal thought fit to remand the matter to the Assessing Officer for a fresh consideration. We find no error in such direction being issued by the Tribunal.

6. The learned Senior Standing Counsel appearing for the appellant submitted that the Tribunal had set aside the confiscation of the goods and interest and penalty imposed on the Managing Director, which is incorrect.

7. Since the Tribunal thought fit to remand the matter back to the Assessing Officer, it has to necessarily interfere with the order of the Assessing Officer.

8. In the light of the above, we find that there is no question of law, much less substantial question of law arising for consideration in this appeal. Accordingly, the Civil Miscellaneous Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

hvk

To

1. Customs, Excise and Service
   Tax Appellate Tribunal,
   South Zonal Bench,
   Shasthri Bhawan Annexe, 1st Floor,
   No.26, Haddows Road,
   Chennai - 600 006.

2. Commissioner of Customs (Exports),
   Customs House,
   Chennai.

C.M.A.No.3427 of 2008
and
M.P.No.1 of 2008

GP(CO)
KKV/23/03/2021