In the High Court of Judicature at Madras

Dated : 03.02.2021

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Ms.Justice R.N.MANJULA

Referred Case No.3 of 2008

Commissioner of Customs (Sea)
Chennai ...Petitioner

Vs

1.The Customs, Excise & Gold
(Control) Appellate Tribunal,
South Zonal Bench, Chennai.

2.M/s.Nice Foto Lab ...Respondents

REFERRED CASE under Section 130A(4) of the Customs Act, 1962 against Final Order No.69/2002 dated 23.01.2002 on the file of the Customs, Excise and Gold (Control) Appellate Tribunal, South Zonal Bench, Chennai, as against the order of the commissioner of customs(Appeals), Chennai, dated 09/04/2001 made in C3/61/12/2001., against the order of the Deputy Commissioner of Customs(GR-5B), Chenai, dated 24/10/2000 made in F.No.825/19900195/99-Refunds u/section 112 of the customs Act 1962.

For Petitioner : Mr.A.P.Srinivas, SSC

Judgment was delivered by T.S.SIVAGNANAM,J

We have heard the learned Senior Standing Counsel for the petitioner.

2.This referred case by the Revenue challenges the order passed by the Customs, Excise and Service Tax Appellate Tribunal, which decided the issue in favour of the assessee.

3.The referred case was filed by the Revenue by raising the following substantial questions of law :

"1.Whether the Tribunal is correct in deciding that the refund claim is not time barred?

2.Whether the 2nd respondents party's claim that their filing of refund application arises only when Commissioner of Customs (Appeals) passed an order-in-appeal in favour of them is correct?

3.Whether it is correct to say that when there is no Court Order/Injunction/Stay and when the party did not protest at the time of payment of duty, the refund application is not time barred?"

4.The statement of cast under Section 130A(4) of the Customs Act, 1962 has been placed before the Court. The issue is with regard to the refund claim of Rs.94,155/-.

5.Mr.A.P.Srinivas, learned senior standing counsel appearing for the revenue would submit that though the amount of refund is less than Rs.1 lakh. He would further submit that since it is a refund issue and if it is a recurring matter, then the case will not be covered under the Monetary Policy.

6.In order to examine as to whether the issue involved is a recurring issue, we have carefully gone through the order-in-original dated 24.10.2000 passed by the Deputy Commissioner of Customs, Chennai, the order-in-appeal dated 09.04.2001 passed by the Commissioner of Customs (Appeals), Chennai and the order of the Tribunal dated 23.01.2002. It could be seen that the assessee had imported a used Konica Nice Print System with standard accessories and the import appears to be for personal use of the importer. Therefore, the facts clearly show that the issue is not a recurrent issue and therefore, the case would be covered by the monetary policy issued by the Central Board of Indirect Taxes and Customs.

5.Accordingly, the referred case is dismissed on the ground of low tax effect and the substantial questions of law raised are left open.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

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To

1.The Customs, Excise and Gold (Control)
Appellate Tribunal,
South Zonal Bench, Chennai.

2.The Commissioner of Customs(Appeals)
Chennai.

3.The Deputy Commissioner of Customs(GR-5B)
Chennai.

+1cc to M/s.A.P.Srinivas, Advocate SR.6427

R.C.No.3 of 2008

GP(CO)
CB(03/03/2021)