BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.11.2022

CORAM

THE HON'BLE MR JUSTICE M.S.RAMESH
AND
THE HON'BLE MR JUSTICE N. ANAND VENKATESH

C.M.A.(MD)Nos.807 to 809 of 2015

M/s.Kali Aerated Water Works
Represented by its Proprietor
K.P.D.Rajendran
127-Trivandrum Road,
Tirunelveli-627 002 ... Appellant/Appellant in all C.M.As

Vs.

1.The Customs Excise and Service Tax,
Appellate Tribunal
South Zonal Bench,
26-Haddows Road,
Chennai-600 006.

2.The Commissioner of Central Excise
NGO 'A' Colony,
Tirunelveli-627 007. ... Respondents/Respondents in all C.M.As

PRAYER in C.M.A(MD)No.807 of 2015: Civil Miscellaneous Appeal filed under Section 35G of the Central Excise Act, 1944, against the miscellaneous order No.42168/2014 dated 28.11.2014 in

No.R/ROA/42243/2014 in Appeal No.E/347/2006-DB passed by the learned First Respondent Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai-600 006.

PRAYER in C.M.A(MD)No.808 of 2015: Civil Miscellaneous Appeal filed under Section 35G of the Central Excise Act, 1944, against the miscellaneous order No.42169/2014 dated 28.11.2014 in No.E/ROA/42242/2014 in Appeal No.E/328/2006-DB passed by the learned First Respondent Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai-600 006.

PRAYER in C.M.A(MD)No.809 of 2015: Civil Miscellaneous Appeal filed under Section 35G of the Central Excise Act, 1944, against the miscellaneous order No.42167/2014 dated 28.11.2014 in No.E/ROA/42244/2014 in Appeal No.E/348/2006-DB passed by the learned First Respondent Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai-600 006.

For Appellant in all C.M.As : Mr.M.Kumar, assisted by Mr.S.Renganathan

For Respondents in all C.M.As :M/s.N.Dilipkumar, Standing Counsel assisted by Mr.K.Prabhu

COMMON JUDGMENT

(Judgment of the Court was delivered by N. ANAND VENKATESH,J.)

M.S.RAMESH,J.
AND
N. ANAND VENKATESH,J.

The issue involved in all these appeals pertains to the challenge made to the orders passed by the Customs, Excise and Service Tax Appellate Tribunal(CESTAT) dismissing the applications filed by the appellant to restore the appeals, which were dismissed through the final order dated 09.08.2007 for non-compliance of the predeposit of duty within the period stipulated by the Tribunal.

2.The appellant filed appeals before the CESTAT challenging the order passed by the Commissioner of Central Excise (Appeals) Madurai. While filing these appeals, applications were filed seeking for dispensing with pre-deposit of the duty amount. These applications were taken up by the Tribunal and an order was passed on 03.05.2007 to the effect that the appellant has to make predeposit of the duty amounts of Rs.2,64,026/-, Rs.2,24,766/- and Rs.2,03,616/- respectively, within a period of eight weeks and report compliance on 10.07.2007.

3.The above amounts that were fixed by the Tribunal were not deposited and consequently, a final order came to be passed on 09.08.2007 dismissing the appeals.

4.After 7 years, applications came to be filed in all the appeals seeking for restoring the appeals, which were dismissed on 09.08.2007 on the ground that the non-compliance of the condition imposed by the Tribunal was not intentional and that the amounts have subsequently been deposited.

5.The Tribunal, on considering the contentions raised on both sides, came to a conclusion that there is absolutely no merit in the applications filed and accordingly, the applications filed for the restoration of the appeals came to be dismissed. Aggrieved by the same, these Civil Miscellaneous Appeals have been filed under Section 35G of the Central Excise Act, 1944.

6.Heard Mr.M.Kumar, learned counsel appearing for the appellant and Mr.N.Dilipkumar, learned Standing Counsel appearing for the respondents.

7.The learned counsel for the appellants mainly raised the ground that the judgment of the Hon'ble Apex Court in the case of ***Kali Aerated Water Works-vs-Commissioner of C.Ex., Madurai***, reported in ***2015(320)E.L.T. 692(S.C)***, has come in favour of the appellant and the appellant is entitled for exemption, since they are held to be a small scale industry. In view of the same, if the appeal is restored, by virtue of the judgment of the Hon'ble Supreme Court, the appellant can succeed in all the appeals.

8.Per contra, the learned Standing Counsel appearing on behalf of the Department submitted that the Tribunal did not have the power or jurisdiction to restore the appeal once a final order has been passed. To substantiate his submission, the learned Standing Counsel brought to our notice the order passed by the learned Single Judge of this Court in ***V.Ramakrishna Rao-vs-Commissioner of Customs, Chennai***, reported in ***2010 SCC Onlline Mad 6371***, wherein *in pari materia* provisions under the

Customs Act were considered and the learned Single Judge took a view that the Tribunal does not have the power to restore the appeal which was dismissed by passing a final order.

9.The learned Standing Counsel further submitted that even on the merits of the case, the final order was passed in the year 2007 and the restoration applications were filed only in the year 2014 and there was absolutely no justification for filing restoration applications after such a long lapse of time. Therefore, it was contended that the Tribunal was perfectly right in dismissing the applications. The learned Standing Counsel concluded his arguments by submitting that no substantial question of law is involved in the present case. Hence, pleaded for dismissal of all these appeals.

10.We have carefully considered the submissions made on either side and perused the materials available on record.

11.There is no dispute with regard to the facts of this case and hence, it will be more appropriate to directly go into the issue that is involved in these appeals. The appeals filed by the appellant against the order passed by the Commissioner of Central Excise (Appeals) Madurai, before the Tribunal was accompanied by an application seeking for dispensing with the predeposit of the duty amount. The Tribunal, on considering the facts and circumstances of the case, found that there was no ground to grant such exemption and hence, directed the appellant to make predeposit amounts within a period of eight weeks and report compliance. Admittedly, the condition imposed by the Tribunal was not complied with and hence, a final order was passed by the Tribunal on 09.08.2007 dismissing the appeals.

12.The Tribunal is a creature of the Statute. Hence, the Tribunal can act only in exercise of such power and jurisdiction as is conferred under the Central Excise Act. On carefully going through the Act and Rules, we do not find any specific power conferred on the Tribunal to restore the appeals which has been dismissed finally. The Tribunal became *Functus officio* once a final order has passed and there is no scope for restoring an appeal thereafter.

13.Even otherwise on merits, we do not find any justification for the appellant to file a petition for restoration of appeals after the exorbitant delay of nearly 7 years. The amount that was directed to be deposited was not exorbitant and the total amount that is involved in all the three appeals put together did not even exceed Rs.7 lakhs. Hence, seeking for restoration of appeals after 7 years without any justification, only calls for a dismissal.

14.The appeals that have been filed before this Court can be maintained only if substantial question of law is involved. There is no question of law much less substantial question of law to be answered in these appeals and what was canvassed before this Court revolves only around facts of the case. It is yet another ground as to why we do not find any merits in these appeals.

15.In view of the above discussion, all the appeals stand dismissed. No costs.

(M.S.R.,J.) (N.A.V.,J.)
09.11.2022

Index : Yes/No
Internet : Yes
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To:

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2.The Commissioner of Central Excise
NGO 'A' Colony,
Tirunelveli-627 007.

3.The Section Officer,
VR Section,
Madurai Bench of Madras
High Court,
Madurai.

M.S.RAMESH,J.

and

N. ANAND VENKATESH,J.

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