ORDER OD – 2

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (CUSTOMS)
ORIGINAL SIDE

CUSTA/2/2023
IA NO: GA/1/2023

COMMISSIONER OF CUSTOMS EXPORT KOLKATA
VERSUS
M/S. VEDANTA LTD.

BEFORE:

The Hon'ble JUSTICE HARISH TANDON

The Hon'ble JUSTICE PRASENJIT BISWAS

Date : 28th June 2023.

Appearance:

Mr. K.K. Maiti, Advocate
....for appellant.

Mr. Gopal Mundhra, Advocate
Mr. Parth Parikh, Advocate
Mr. Rishi Raju, Advocate
Ms. Shreya Mundhra, Advocate
....for respondents.

THE COURT:- At the outset, Mr. Maiti, learned advocate appearing for the appellant, has fairly and concededly submitted that in terms of the final order passed by the Customs, Excise and Service Tax Appellate Tribunal, against which the instant appeal has been filed, the original authority has decided the issue and in technical term, the instant appeal has virtually become infructuous. However, Mr. Maiti arduously submits that the legal point which is yet to be decided should have been decided by this Court in relation to the scope and power of the authority under Section 154 of the Customs Act, 1962.

It is manifest from the record that the issue concerning the levy of Customs duty upon determination has traveled at different fora permissible under the law and ultimately reached to this Court as the Tribunal disagreeing with the view of the original authority as well as the appellate authority remanded the matter to decide the same in the light of the ratio of the law laid down by the Apex Court in the case of Union of India & Others v. Gangadhar Narsingdas Aggarwal reported in 1997 (89) ELT 19 (SC). Mr. Maity is very much critical on the observations of the Tribunal to the extent of applicability of the ratio laid down therein as, according to him, the scope and powers of the authority vested under Section 154 of the said Act do not permit each and every kind of omission or error arising from an accidental slip to re-visit the order of assessment passed by the competent officer but must be restricted to such error as envisaged by legislatures while legislating the said Act. According to Mr. Maity, both the appellate authority on earlier occasion as well as the Tribunal have exceeded the jurisdiction and/or expanded the definition of 'omission' which runs counter to the spirit and soul of the said Section and, therefore, there is no impediment on the part of the department to agitate the said point in the instant appeal.

Though the submissions advanced by Mr. Maiti at the first blush appear attractive, but after going through the orders passed in the proceedings which is pending for more than a decade, we could not persuade ourselves to agree with the argument advanced by Mr. Maity for the reasons indicated hereinbelow.

The respondents exported iron ore fines and iron (fe) and submitted 12 shipping bills with the authority. Since the said goods attract Customs duty, the concerned officer assessed the same at Rs.300/- per MT which appeared to the respondents an error and/or omission on the part of the authority in not correctly assessing and/or following the procedure required in this regard and thereafter they applied for rectification and/or correction of such omission and/or error under Section 154 of the Act. The said order could not be sustained by the appellate authority upon noticing the judgment of the Apex Court rendered in the case of Gangadhar Narsingdas (supra). Several judgments were cited by the respondents of the different High Courts as well as the Supreme Court on interpretation of the word 'omission' and it was sought to be contended by the respondents that such an error or the omission committed by the concerned officer in assessing the Customs duty comes within the purview of Section 154 of the Act. The appellate authority reversed the order of the concerned authority and directed reconsideration of the representation filed by the respondents with clear stipulation that the same comes within the purview of the error arising out of an omission in the light of the ratio of the judgments referred therein. The department did not challenge the said order of remand passed by the appellate authority; rather proceeded to accept the observations made therein and the first authority again decided the case rejecting the claim of the respondents. The appellate authority concurred the view of the original authority and the matter traveled before the Tribunal and by the impugned order, the matter was further relegated to the original authority.

So far as the scope and the powers to be exercised by the authority under Section 154 of the Act are concerned, the appellate authority in the order of remand considered the same and found that there has been a departure from the ratio of law laid down by the Supreme Court in ascertaining the content of 'fe' and therefore if the authority has adopted a method contrary to the decision of the Supreme Court, it must be regarded as an error or omission arising in the decision. The 'error' arising therein from accidental slip or omission has to be construed in a proper perspective and should not be squeezed in a narrow compass. The error is perceived from the omission or the accidental slip and therefore, the word 'omission' should not be given a restrictive meaning but should be expanded to imbibe within itself an error occurred because of such omission.

We do not delve to go much deep into the above aspect for the simple reason that the authorities have accepted the order of remand passed by the appellate authority on the first occasion and proceeded thereupon and therefore, it is too late in the day to take such a plea at an advance stage of the litigation which, in our opinion, is practically a second round of litigation, though commenced from the original cause. A further argument is advanced by Mr. Maiti that it is a paramount duty of the exporter to make a self-assessment of the duty as envisaged under Section 17 of the said Act. The reliance appears to have been placed upon Sub-section (1) of Section 17 which, in our opinion, is misplaced for the simple reason that Section 17 has undergone a radical change by way of an amendment (Act 8 of 2011) with effect from 08.04.2011. The instant case pertains to transactions of export prior to 2011 and therefore, the Section which stood as on the date of such export has to be applied which does not mandate the exporter to self-assess the duty by submitting the shipping bills. The amended provisions cannot be pressed in action in relation to transactions prior to coming in force thereof unless the amending Act clearly provides the applicability of such amended provisions to operate retrospectively or by necessary implications. In absence of any such mandate in an amending Act, the law cannot be perceived to operate retrospectively but to operate prospectively i.e. from the date when it came into existence and/or was enforced. The law is always to be look forward and not backward. There is no fetter on the part of the legislature to express any amendment of the law to operate retrospectively. Having not done so, it is always construed to operate prospectively unless the contrary intention is gathered by necessary implications. The sound reasons behind the aforesaid should be that the thing which is almost settled should not be allowed to be unsettled by a subsequent operation of law. We, thus, do not find any question of law, far less to speak of substantial question of law, involved in the instant appeal.

The appeal is, thus, dismissed. Consequently, the connected application also stands dismissed.

No order as to costs.

(HARISH TANDON, J.)

(PRASENJIT BISWAS, J.)

s. kumar