OD–8

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION
ORIGINAL SIDE

RVWO/19/2022
IN CUSTA/14/2021
IA No. GA/2/2022
COMMISSIONER OF CUSTOMS AIRPORT (ADMINISTRATION) KOLKATA
VS.
M/s. CRI LTD.

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 17TH FEBRUARY, 2023

Appearance :
Mr. Bhaskar Prosad Banerjee, Adv.
Mr. Abhradip Maity, Adv.
...for appellant
Mr. Sujit Ghosh, Adv.
Mr. Joybrata Misra, Adv.
Mr. Subh Dixit, Adv.
Mr. Rahul Dhanuka, Adv.
Mr. Pratik Samajpati, Adv.
...for respondent

The Court : - Heard learned Counsel for the either side.

This review application has been filed by the revenue to review a judgment and order in CUSTA/14/2021 dated 7.3.2022. The first ground raised by the review applicant is that in the light of the decision of the Hon'ble Supreme Court in the case of M/s. Asean Cableship Pte. Ltd.-vs-The Commissioner of Customs vide Special Leave Petition (C) No. 2208 of 2022, 2022(3) TMI 760-SC dated 15.3.2022. The order passed by this Court holding that the appeal is maintainable does not lay down correct legal principle, and, therefore, calls for review. The second ground raised by the revenue in this review application is that in the decision of the Hon'ble Supreme Court in Commissioner of Customs, Bengalore -1 Vs. M/s. Motorola India Limited, 2019(9) TMI 229 – SC dated 5.9.2019, the Hon'ble Supreme Court held that the case would not fall within the categories of cases which are to be dealt with by the Hon'ble Supreme Court.

Therefore, in the light of the said decision, it is submitted that the judgment and order dated 7.3.2022 calls for review. Firstly, the decision in the case of M/s. Asean Cableship Pte. Ltd. was delivered by the Hon'ble Supreme Court on 15.3.2022 much after the judgment and order of this court dated 7.3.2022. Therefore, by referring the said decision the review application cannot be entertained. Be that as it may, the decision in the case of M/s. Motorola India Limited clearly lays down the legal principle as to which of the categories of cases are entitled to be given a special treatment of providing an appeal directly to the Hon'ble Supreme Court. We are required to see as to whether the case on hand would fall within anyone of those categories mentioned by the Hon'ble Supreme Court. At this juncture it will be beneficial to take note of the relevant paragraph in the decision of the Hon'ble Supreme Court in M/s. Motorola India Limited.

"16. We are of the considered view that the legislature has carved out only following categories of cases to which it has intended to give a special treatment of providing an appeal directly to this court.

i] determination of a question relating to a rate of duty;

ii] determination of a question relating to the valuation of goods for the purpose of assessment;

iii] determination of a question relating to the classification of goods under the Tariff and whether or not they are covered by an exemption notification;

iv] whether the value of goods for purposes of assessment should be enhanced or reduced having regard to certain matters that the said Act provides for.

17. Reverting to the present case, it could clearly be seen that the only question that is involved is whether the assessee had violated the conditions of the exemption notification by not utilizing the imported materials for manufacturing of the declared final product and was, therefore, liable for payment of duty, interest and penalty. Neither any question with regard to determination of rate of duty arises nor a question

relating to valuation of goods for the purposes of assessment arises in the present case. The appeals also do not involve determination of any question relating to the classification of goods, nor do they involve the question as to whether they are covered by the exemption notification or not. Undisputedly, the goods are covered by the said notification. The only question is as to whether the assessee has breached the conditions which are imposed by the notification for getting exemption from payment of the customs duty or not. The appeals do not involve any question of law of general public importance which would be applicable to a class or category of assessees as a whole. The question is purely inter-se between the parties and is required to be adjudicated upon the facts available."

In terms of the above decision, if the case relates to determination of a question relating to classification of goods under the Tariff and whether or not they are covered by an exemption notification, it would fall within one of the categories of cases which have been entitled to give a special treatment of providing an appeal directly to the Hon'ble Supreme Court. Admittedly, in the instant case, the stand of the department is that the goods dealt with by the respondent/assessee are not covered by the exemption notification. If that be so, the appeal is maintainable before the Hon'ble Supreme Court. Furthermore, the facts in M/s. Motorola India Limited are slightly different from the facts of the case on hand. In the said decision the only question that was involved was whether the said assessee had violated the conditions of the exemption notification by not utilizing the imported material for manufacturing of the declared final product and, therefore, liable for payment of duty, interest and penalty. However, the distinguishing feature in the case on hand is that the department takes a stand that the goods dealt with by the respondent are not covered by exemption notification which was not the facts in the case of M/s. Motorola India Limited. Thus, we find that no grounds have been made to review the judgment and order of this court dated 7.3.2022.

For the above reasons, the review application stands dismissed.

The review applicant upon furnishing a photocopy of the order dated 7.3.2022, the registry shall return the original certified copy of the order passed by the learned tribunal as well as the original certified copy of the order passed by this court dated 7.3.2022 to the advocate on record.

Affidavit in reply filed in court today be kept with the record.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

Pkd/GH.