IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2023

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

C.M.A. Nos. 1152 and 1154 of 2023
and
C.M.P.Nos.11177 and 11179 of 2023

Ashish Mundhra .. Appellant in both CMAs

Versus

The Commissioner of Customs,
Chennai - I Commissionerate,
New Custom House,
Air Cargo Complex,
Meenambakkam, Chennai - 600 027 .. Respondent in both CMAs

Civil Miscellaneous Appeals are filed under Section 130 of Customs Act, 1962 against the order dated 04.05.2023 passed by the Customs, Excise and Service Tax Appellate Tribunal, Chennai, in Diary Nos.40390 and 40391 of 2021.

For Appellant : Mr. N. Murali Kumaran, Senior Advocate for MCGAN Law Firm in both appeals

For Respondent : Mr.V.Sundareswaran

Senior Panel Counsel in both appeals

COMMON JUDGMENT

(Judgment of the court was delivered by **R. MAHADEVAN, J.**)

Assailing the orders dated 04.05.2023 in Diary Nos.40390 and 40391 of 2021, passed by the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) Chennai, the appellant/assessee has come up with these two appeals.

2. The common substantial question of law raised in these appeals is as under:-

> " *Whether the Tribunal is justified in dismissing the appeal filed by the appellant herein, as defective, for non-payment of pre-deposit on the penalty imposed, when the issue of penalty is seized by this Hon'ble Court in W.P. No. 5908 of 2021 and is pending adjudication, on the file of this Hon'ble Court?"*

3. The appellant was a Director of a company called Mundhra Bullion Private Limited, which is engaged in trading bullion. During the course of their business, on 14.10.2013, the appellant carried gold weighing 15.16 kilograms from Kolkatta to Chennai in his hand baggage and it was also duly declared to the airport authorities. Inspite of the same, the officials of the Directorate of Revenue Intelligence seized the same on the ground that he is in illicit possession of the gold items. Subsequently, on 13.04.2014, a show cause notice was issued to the appellant and others in connection with the seizure, followed by an order of adjudication dated 13.07.2020. Challenging the order dated 13.07.2020, the appellant and others filed Statutory appeals under Section 128 of The Customs Act before the Commissioner of Customs (Appeals-II) Chennai. The Department also filed cross appeals aggrieved by the order of the adjudicating authority with respect to certain observations. All the appeals and cross appeals were heard on 28.10.2020 and the appeals were adjourned for hearing on 04.11.2020. While so, on 04.11.2020, the department has filed additional grounds of appeal, a copy of which was served to the counsel for the appellants during the course of hearing. Even though the appellants sought time to respond to the additional grounds of appeal, it is alleged that the appellate authority rejected the said request and dismissed the appeals on 27.11.2020 without giving any further opportunity.

4. Challenging the order dated 27.11.2020, the appellant filed WP No. 5908 of 2021 and two other writ petitions being WP Nos. 12753 and 12756 of 2021 were also filed. During the course of hearing of the writ petitions, the counsel for the Writ Petitioners/appellants undertook to agitate the issues other than the statutory violation before The Customs, Excise & Service Tax Appellate Tribunal (CESTAT) by filing an appeal. On the basis of

such submission, Writ Petition No. 5908 of 2021 etc., batch were dismissed on 11.01.2022. Thereafter, the appellant filed appeals in Diary Nos. 40390 and 40391 of 2021. Notwithstanding the filing of the statutory appeals, the appellant and others also filed Writ Appeal Nos. 453 to 455 of 2022 before the Division Bench of this Court, challenging the order dated 11.01.2022 passed in WP No. 5908 of 2021 etc., batch, on the ground that the learned Judge, without deciding the issue relating to statutory violation on merits, erroneously dismissed the writ petitions. The Division Bench of this Court, accepting such submission made on behalf of the appellants, passed the common Judgment dated 27.04.2022, setting aside the order dated 11.01.2022 passed in WP No. 5908 of 2021 etc., batch and remanded the matter back to the learned Judge for fresh consideration.

5. As far as the statutory appeals filed by the appellant before CESTAT, they were not numbered by insisting the appellant to make pre-deposit of 7.5% out of the penalty amount imposed under Section 129 E of the Customs Act, 1962 and ultimately, the appeals were rejected on 04.05.2023 for non-payment of the mandatory pre-deposit. According to the appellant, the Tribunal, without taking note of the fact that the issue relating to enhancement of penalty and other statutory violation are seized by this Court in WP No. 5908 of 2021

etc., batch after the order of remand dated 27.04.2022 passed by the Division Bench of this Court in W.A. Nos. 453 to 455 of 2022, has erroneously rejected the appeals for not making the pre-deposit amount by order dated 04.05.2023. Therefore, the present Civil Miscellaneous Appeals are filed.

6. We have heard the learned counsel for both sides and perused the materials placed on record.

7. When these Civil Miscellaneous Appeals are taken up for hearing, the learned counsel for the appellant produced a copy of the memo filed by the appellant on 07.07.2023, which reads as follows:-

> "The appellant above named begs to submit as follows:-
>
> 1. The above C.M.A.s have been filed by the appellants as against the order passed by the CESTAT dated 04.05.2023 dismissing the appeals of the appellants for non-payment of the mandatory pre-deposit.
>
> 2. The appellants were before your Lordships contending that the pre-deposit relates to levy of fine which has been stayed in W.A. Nos. 5908 and 5910 of 2021 which are pending before the learned single Judge of this Honourable Court, after an Order of remand by Your Lordships in WA Nos. 453 to 455 of 2022 dated 27.04.2022.
>
> 3. Without prejudice to the rights of the appellants and the outcome of W.P. Nos. 5908 and 5910 of 2021, the Appellant are willing to make the payment of pre-deposit as insisted by the CESTAT
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> 4. It is therefore prayed that this Honourable Court may be pleased to record this Memo and take the same on file and pass appropriate orders and thus render justice."

8. In view of the fact that the appellant is inclined to make the pre-deposit as insisted by the Tribunal, there is nothing survives for adjudication in these Civil Miscellaneous Appeals. Accordingly, by recording the Memo dated 07.07.2023 of the appellant, these appeals are disposed of. If the appellants make any pre-deposit as a condition precedent for entertaining the appeals, within a period of four weeks from the date of receipt of a copy of this judgment, the Tribunal shall, notwithstanding the orders of rejection dated 04.05.2023, accept such pre-deposit and entertain the appeals, if they are otherwise in order. No costs.

[**R.M.D.,J.**] [**M.S.Q.,J.**]
10.07.2023

Index : Yes/no
Internet:Yes/no
av/rsh

To

1. The Customs, Excise and Service Tax Appellate Tribunal,
   Regional Bench, Court No.1, Chennai.

2. The Commissioner of Customs,
   Chennai - I Commissionerate,
   New Custom House,
   Air Cargo Complex,
   Meenambakkam, Chennai - 600 027.

R. MAHADEVAN, J.
and
MOHAMMED SHAFFIQ, J.

av/rsh

CMA Nos.1152 & 1154/2023

10.07.2023