IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2024

CORAM

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

C.M.A.Nos. 431 of 2020, 110 and 111 of 2022

The Commissioner of Customs Sea,
Commissioner of Customs (II),
Customs House,
60, Rajaji Salai,
Chennai 600 001. .. Appellant in all Appeals

Vs.

M/s.Tinna Rubber Infrastructure Limited,
Tinna House,
No.6, Sultanpur, (Mandi Road)
Mehrauli, New Delhi - 110 030. .. Respondent in all Appeals

PRAYER in C.M.A.No.431 of 2020 : Civil Miscellaneous Appeal filed under Section 35G of Central Excise Act, 1944, praying to set aside the impugned Final Order No.41563 of 2018 (C/40238/2016-DB) dt.21.05.2018 passed by the Hon'ble Tribunal.

PRAYER in C.M.A.No.110 of 2022 : Civil Miscellaneous Appeal filed under Section 35G of Central Excise Act, 1944, praying to set aside the impugned Final Order No.41605 of 2018 (C/42176/2016-DB) dt.21.05.2018 passed by the Hon'ble Tribunal.

PRAYER in C.M.A.No.111 of 2022 : Civil Miscellaneous Appeal filed under Section 35G of Central Excise Act, 1944, praying to set aside the impugned Final Order No.41620 of 2018 (C/41686/2017-DB) dt.21.05.2018 passed by the Hon'ble Tribunal.

For Appellant : Mr. V. Sundareswaran
in all Appeals Senior Panel Counsel

For Respondent : Mr. Raghavan Ramabadran
in all Appeals for M/s. Lakshmi Kumaran
and Sridharan

COMMON JUDGMENT

All these appeals arise from a common order dated 21.05.2018 passed by the Customs, Excise & Service Tax Appellate Tribunal, Chennai, raising the following substantial questions of law:

(A)Whether in the facts and circumstances of the case, the Tribunal is right and justified in allowing the appeal of the assessee when the rubber scrap imported by the respondent herein is liable to CVD?

(B)Whether the Tribunal is right in not deciding the issue on merits and simply following the judgment of the Delhi High Court reported in 2017 (353) ELT 161 and the said judgment of the Delhi High Court has now been set aside by the Supreme Court in CA No.6874-6875 of 2018 dated 23.07.2018?

(C)Whether the Tribunal is right in not considering that rubber scrap imported by the respondent herein is a different commercial commodity that has emerges as a result of manufacture / processing of old tyres and just because the respondent terms the process as cutting of old tyres into three pieces, it does not go out of ambit of manufacture?

(D)Whether the Tribunal is right in not considering that the twin test of manufacture and marketability are complied in the present case and therefore, the rubber scrap imported by the respondent herein is liable to CVD?

2.Today, when the appeals were taken up for consideration, the learned counsel appearing for both sides, in unison, submitted that the issue involved herein is covered by the judgment of this court in C.M.A.No.2505 of 2019 etc. batch, dated 04.01.2024, in which, the common order dated 21.05.2018, which is the subject matter of the present appeals, passed by the CESTAT was set aside and the matters were remanded to it for fresh consideration on merits and in accordance with law, after affording reasonable opportunity of being heard to the respondent herein.

3.In view of the above, these Civil Miscellaneous Appeals stand disposed of on the same terms as has been done in C.M.A.Nos.2505 of 2019 etc. batch, dated 04.01.2024. Accordingly, the substantial questions of law involved herein are answered in favour of the Revenue. No Costs.

[R.M.D.,J.]   [M.S.Q.,J.]
05.01.2024

Neutral Citation: Yes/No
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To

1. The Customs, Excise & Service Tax Appellate Tribunal,
   Chennai

2. The Commissioner (Appeals -II)
   60 Rajaji Salai, Custom House,
   Chennai -600 001

3. The Commissioner of Customs Sea,
   Commissioner of Customs (II),
   Customs House,
   60, Rajaji Salai,
   Chennai 600 001.

R.MAHADEVAN, J.
AND
MOHAMMED SHAFFIQ, J.

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C.M.A.Nos. 431 of 2020, 110 and 111 of 2022

05.01.2024