IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05.08.2024

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**
and
THE HONOURABLE **MR. JUSTICE G.ARUL MURUGAN**

C.M.A.No.1343 of 2013
and
M.P.No.1 of 2013

Commissioner of Customs,
Custom House,
No.60, Rajaji Salai,
Chennai – 600 001. ... Appellant

Vs

1.M/s. Drive India Enterprise Solutions Ltd.,
Kamala Executive Park, 7th Floor,
Near Wazir Glass Factory,
Off Andheri Kurla Road, Andheri East,
Mumbai – 400 059.

2.Customs, Excise and Service Tax,
Appellate Tribunal,
South Zonal Bench,
Nungambakkam,
Chennai. ... Respondents

PRAYER: Appeal filed under Section 130(i) of the Customs Act, against the order dated 11.06.2012 passed in C/COD/701/2011, C/S/253/2011 and C/318/2011 on the file of the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench at Chennai.

For Appellant : Mr.M.Santhanaraman

For Respondents : Mr.B.Satish Sundar (for R1)

R2 - Tribunal

JUDGMENT

(Judgment of the Court was delivered by Dr.ANITA SUMANTH,J.)

The petitioner had sought a refund of Special Additional Duty (SAD) and had suffered an order of rejection of the refund by way of order-in-original dated 11.01.2011. As against the same, an appeal had been filed before the Commissioner of Customs (Appeals) Seaport which had come to be rejected by order dated 18.08.2011 to the effect that that the Commissioner does not hold the requisite jurisdiction to process the refund claim and directing transfer of the claim to the jurisdictional Commissioner, who was the Commissioner, Airport.

2.As against that order, the Revenue filed an appeal before the Customs, Excise and Service Tax Appellate Tribunal (CESTAT). The appeal came to be disposed vide order dated 11.06.2012, aggrieved with which the present Civil Miscellaneous Appeal has been filed raising the following two substantial questions of law:

> *'1.Whether, CESTAT order is just and proper in holding that all the Commissioner mentioned in Col-3 of Serial No.7 of the Notification No.15/2002-Cus. (NT) dated 7.3.2002 have concurrent jurisdiction over the area mentioned against the*

said Serial No. Of the Notification?

2.Whether, in the absence of any / explicit provision in the Customs Act, 1962 or in the Rules, regulations framed thereto, the direction of the CESTAT to transfer the refund claim to dealing AC/DC of the Air Cargo Complex can be held legal and proper?'

3.Heard Mr.M.Santhanaraman, learned counsel for the petitioner and Mr.B.Satish Sundar, learned counsel for R1.

4.As far as the first question is concerned, our attention is drawn to Notification No.15/2002-Cus. (NT) dated 07.03.2002, which has been issued in supersession of various earlier Notifications of the Government of India and setting out the hierarchy of Officers and the assignment of their charges to various Commissionerates in the Country. Serial No.7 deals with the State of Tamil Nadu and reads thus:

Sr.No	***Area***	***Designation of the Officer***		
(1)	***(2)***	***(3)***	***(4)***	***(5)***
7	*(a)Port of Chennai, Port of Ennore, the Anna International Air Port and the area under the jurisdiction of the Chennai Corporation and Ambattur, Gummidipoondi, Poonamallee and Ponneri Taluks of Thiruvallur Dist.,*	*Commissioners of Customs, (Airport & Aircargo), Chennai, Port (Import), Chennai, Port (Export), Chennai.*	*Additional Commissioners, or Joint Commissioners, of Customs working under the control of the Commissioners of Customs, (Airport and Aircargo), Chennai, Port (Import),*	*Deputy Commissioners, or Assistant Commissioners, of Customs working under the control of the Commissioners of Customs, (Airport and Aircargo), Chennai, Port (Import),*

Sr.No	***Area***	***Designation of the Officer***		
	Tambaram Taluk of Kancheepuram District and and the designated areas in the Continental Shelf and Exclusive Economic Zone of India as declared by the Government of India from time to time. *(b) Chennai Export Processing Zone*		*Chennai, Port (Export), Chennai.*	*Chennai, Port (Export), Chennai.*

5.As may be seen in column No.1, the charges adumbrated are Port of Chennai, Port of Ennore (both Seaports) and Anna International Airport (Airport). Thus, the entirety of column No.7 deals with Commissionerates both in the Airport as well as Seaport each yet again, divided into import and export departments. The other 3 columns deal with the charges of Commissioners, Additional Commissioners, Joint Commissioners, Deputy Commissioners and other Officers.

6.The grievance expressed is as regards the specific observation of the Tribunal to the effect that '*the Commissioners of Customs in Chennai and* *their A.C./D.C. of Customs have concurrent jurisdiction over the Ports as well as the Airports'*. On an appreciation of the Commissionerates and charges stipulated in Clause 7 of Notification No.15/2002, the aforesaid observation of the Tribunal appears incorrect. The Commissionerates of Seaport and Airport are clearly demarcated and delineated and their charge would be restricted to those matters that fall within their competence only. There can thus be no assumption of jurisdiction by officers of Commissionerate in regard to matters falling with the jurisdiction of the other Commissionerate. The first substantial question of law is thus answered in favour of the Revenue.

7.Coming to the second substantial question of law dealing with the transfer of the refund claim, we fell a hyper technical stand has been taken by the Revenue. It is always open to a superior authority to direct transfer of an appeal from one authority to another based on the competence of the authority to whom it is transferred to hear the matter.

8.In the present case, since the matter related to refund to be obtained from the Airport Commissioner, the matter had rightly been directed to be transferred to the Commissionerate Airport and there ought to have been no quarrel put forth by the Revenue on this aspect.

9.It is brought to our notice by the learned counsel that based on the order of the Tribunal in *Commissioner of Customs, Chennai v. Drive India*

Enterprise Solutions Ltd [2012 (284) E.L.T. 218 (Tri.-Chennai)], several similar matters have been decided such as:

(1) *IDS Denmed Pvt. Ltd. v. Commissioner of Customs, Chennai* [2015 (325) E.L.T. 639 (Mad.)]
(2) *Medsource Ozone Biomedicals Pvt. Ltd. v. Commissioner of Customs, Chennai* [2016 (334) E.L.T. 286 (Mad.)]
(3) *M/s.Textile Dyechem Pvt Ltd v. The Commissioner of Customs, Chennai and another* [2016-TIOL-73-HC-MAD-CUS]
(4) *Diamond Mink Blankets Ltd. v. Commissioner of Customs (Exports), Chennai* [2017 (357) E.L.T. 740 (Tri.-Chennai)]

Hence, any intervention in, or disturbance of the order of the Tribunal at this juncture, may upset the apple cart as far as the issue of refund claim is concerned. We are also given to understand that the same issue is pending in WP(MD)No.7402 of 2024.

10.Hence, we make it clear that there shall be no adverse repercussions by virtue of the present order, on any matter seeking refund of SAD. The second substantial question of law is answered in favour of the respondent assessee.

11.This Civil Miscellaneous Appeal is disposed in terms of this order. No costs. Connected miscellaneous petition is closed.

(A.S.M.,J) **(G.A.M.,J)**
05.08.2024

Index: Yes/No
Neutral Citation : Yes
Speaking order : Yes

vs

To

The Appellate Tribunal,
Customs, Excise and Service Tax,
South Zonal Bench, Nungambakkam,
Chennai.

Dr.ANITA SUMANTH,J
AND
G.ARUL MURUGAN,J.

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