IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2024

CORAM :

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

C.M.A.No.517 of 2013

The Commissioner of Customs (Export)
Customs House,
No.60, Rajaji Salai,
Chennai – 600 001. ..Appellant

vs

1.M/s. Sree Rayalaseema dutch Kassenbouw Ltd.,
M/s Sree Rayalaseema Hi Strength Hypo Ltd.,
M/s Sree Rayalaseema Alkalies & Chemicals Ltd.,
Gondipara, Kurnol, AP – 518 004.

2.Customs Excise and Service Tax Appellate Tribunal
South Zonal Bench, Shastri Bhawan Annex,
I Floor, No.26, Haddows Road,
Chennai – 600 006. .. Respondents

Prayer : Appeal filed under Section 130A of the Customs Act, 1962 against final order passed in Appeal No. M.D.C.202/2011 & C.204/2011 by the Customs Excise and Service Tax Appellate Tribunal (South Zone), Chennai dated 04.11.2011.

For Appellant : Mr.Mr.K.S.Ramaswamy
Senior Standing Counsel

For Respondents : Mr.Hari Radha Krishnan
for R1
R2 – Tribunal

JUDGMENT
(Delivered by Dr. ANITA SUMANTH.,J)

Heard Mr.K.S.Ramaswamy, for the appellant and Mr.Hari Radhakrishnan, appearing for the first respondent.

2. The challenge in the present matter is to an order of the CESTAT allowing the appeal of the assessee / respondent for conversion of shipping bills.

3. The petitioner had exported hydrogenerated caster oil / 12 hydroxy stearic acid, under various consignments during the period 1.4.1997 - 14.4.1998. Admittedly, at the relevant point in time, the exports were not covered under the DEPB Scheme.

4. While this is so, the Director General of Foreign Trade had issued Public Notice bearing No. 31(RE-98)/1907-2002 on 21.08.1998 invoking the powers conferred under paragraph 4.11 of the Exim Policy 1997 - 2022 vide S.O.No. 283(E) dated 31.03.1997. In terms of that Public Notice, the benefits under the DEPB Scheme were extended to various commodities as notified in Annexure A thereto.

5. Specifically, the extension of benefit was retrospective, with effect from 01.04.1997 under paragraph 1 to the Public Notice where the authorities states that *'the rates notified in Annexure A to this Public Notice shall cover the shipments made from 1.4.97 to 14.4.98.'*

6. The products exported by the petitioner,being, hydrogenerated caster oil/12 hydroxy stearic acid, figure at Serial No. 967 to that Annexure. Hence the petitioner had made a request before the

authority seeking the benefit extended under Public Notice dated 21.08.1998.

7. An Order-in-Original came to be passed on 20.05.2011 rejecting the request of petitioner. The reason assigned by the Commissioner of Customs (Exports) was that, at the time of export, the goods were not eligible under the DEPB scheme and such benefits were extended only on 21.08.1998. In concluding so, the authority has negated the stipulation regarding retrospective application of the Public Notice.

8. The Commissioner has proceeded on the basis that Section 149 provides for amendment only on the basis of documentary evidence contemporaneous with the fatum of export. Noting that there was no contemporaneous evidence, the request of the respondent was rejected.

9. As against the same, an appeal was filed before the CESTAT which, in our view, rightly held that the rejection of the petitioner's request was incorrect. The CESTAT notes that the Public Notice had been issued in public interest and with retrospective application.

10. The Public Notice makes it clear that exports during the period 14.4.1997 - 14.4.1998 would be covered by the benefit under that Notice. The denial of the petitioner's request is thus contrary to the very object of the Public Notice, both in letter and spirit and the order of the CESTAT is thus upheld.

11. That apart, the petitioner had earlier approached this Court seeking a mandamus for disposal of its representation seeking conversion of benefits and by order dated 16.03.2009, the representation had come

to be disposed adverse to the petitioner. An appeal had been filed before the Tribunal on 22.06.2010, and the matter stood remanded to the file of the jurisdictional Commissioner, with the following observations:-

> *"2. The Commissioner has rejected the request of the exporters for conversion of Free Shipping Bills into DEPB Shipping Bills. During the period of export i.e., between 1.4.1997 and 14.4.1998 the goods exported namely hydrogenerated caster oil/12 hydroxy stearic acid were not covered under the DEPB Scheme. However, with the issue of Public Notice No.31 dated 21.8.1998 exports, inter alia, of the above mentioned items during the period 1.4.1997 to 14.4.1998 were covered. Section 149 of the Customs Act provides for amendment of the Bill of Entry subject to the rider that no amendment of a Bill of Entry shall be carried out after the imported goods have been cleared for home consumption or deposited in a warehouse or the export goods have been exported, save on the basis of documentary evidence which was in existence at the time that the goods were cleared, deposited or exported, as the case may be. The assessee's contention that the Public Notice should be deemed to have been in existence at the time when the goods were exported is well founded in the light of the fact that the Notice of August 1998 covers exports during the period of April 1997 to April 1998. It is for the Commissioner to consider the request for amendment on the basis of the Public Notice and pass fresh orders after extending a reasonable opportunity to the assessees of being heard in their defence."*

12. The remand is specifically only for the limited purpose of enabling the Commissioner to pass fresh orders after hearing the petitioner. However, the Tribunal had categorically noted that, exports for the period 1.4.97 to 14.4.98 were covered under Public Notice dated 21.08.1998.

13. No appeal has been filed by the Customs Department challenging order dated 22.06.2010 and having acceded to the directions issued, a different view cannot be canvassed now.

14. The substantial questions of law that have been admitted by this Court on 01.04.2013 are extracted below:-

> *"1.When Section 149 of the Customs Act is self-contained in so far as the procedure regarding the document is concerned, whether the Tribunal is right in holding that the stand taken by the Department is too hyper technical?*
> *2.That the Department has acted in consonance with Section 149 of the Customs Act, 1962 and when admittedly there is on statutory violation, whether strict compliance of Section 149 of the Customs Act should be termed as hyper technical?*
> *3. Whether the CESTAT order directing the Department for amendment for shipping bills under Section 149 of the Customs Act, 1962 on the basis of the DGFT's public notice which was even not in existence at the time of export, would not amount to bypassing the statutory provisions contained in Section 149 of the Customs Act, 1962?"*

15. We confirm the order of the Tribunal dated 04.11.2011 and answer the substantial questions against the Revenue and in favour of the assessee.

16. This appeal is dismissed. No costs.

[A.S.M., J] [G.A.M., J]
30.10.2024

Index:Yes
Neutral Citation:Yes
ssm

To
The Customs Excise and Service Tax Appellate Tribunal
South Zonal Bench, Shastri Bhawan Annex,
I Floor, No.26, Haddows Road,
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DR. ANITA SUMANTH.,J.
and
G. ARUL MURUGAN.,J.

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