IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM:

DATED : 19.10.2024

THE HONOURABLE **MR.JUSTICE R.SURESH KUMAR**
and
THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

C.M.A.No.1444 of 2020

M/s.International Seaport Dredging Ltd.,
5th Floor, Chellam Towers,
113, Dr.Radhakrishnan Salai,
Chennai 600 004. ... Appellant

vs.

The Commissioner of Customs,
No.1, Williams Road,
Trichirappalli,
Tamil Nadu 620 001. ... Respondent

PRAYER: This Civil Miscellaneous Appeal is filed under Section 130 of the Customs Act, 1962, to set aside the modified order passed in Misc.Order No.40564/2019 dated 31.10.2019 in ST/ROM/40253/2019-DB in Final Order No.40046/2019 dated 10.01.2019 in Appeal No.C/379/2012-DB.

For Appellant : Mr.N.Vishwanathan

For Respondent : Mr.M.Santhanaraman
Senior Standing Counsel

JUDGMENT

(Judgment of the Court was delivered by **C.SARAVANAN,J.)**

This Civil Miscellaneous Appeal is directed against M.P.No.40564/2017 dated 31.10.2019 passed by the Customs Excise and Service Tax Appellate Tribunal (Chennai).

2. By the impugned order, the Tribunal has rejected the application filed by the appellant for Rectification of the Mistake in Final Order No.40046/2019 dated 10.01.2019 under Section 129B(2) of the Customs Act, 1962 r/w Rule 28C CESTAT (Procedure) Rules, 1982.

3. This appeal came up for admission on 12.10.2020, However, the above appeal was not admitted. It is stated that notice was ordered on the respondent returnable by four weeks. In this appeal, the appellant has raised the following substantial questions of law for being considered by this Court under Section 130 of the Customs Act, 1962:-

1. Whether the tribunal was right in passing the cryptic order merely based on the purported ratio of the decision of the co-ordinate Bench which actually did not concern the goods (multipurpose work boat) imported by the appellant and involved in this appeal by overlooking all the other grounds and judicial pronouncements cited in support by the appellant herein including the additional grounds raised by them?

2. Whether the Tribunal was right in recording the finding that the Bill of Entry filed by the appellant declaring the CTH for the goods as 8904 is the crucial document and therefore it cannot entertain the alternative plea for re-classification of the goods since it will be not only against the said document but also clearly beyond their jurisdiction, even after admitting the petition raising additional grounds filed by the appellant and when the statutory provisions contained in Sec. 129 B of the Customs Act confer the appellate power on the Tribunal to sit in judgment over the orders of the Commissioner of Customs and permits it to annul, confirm, modify or remit back the case to the original authority?

3. Whether the Tribunal was right in dismissing the petition seeking rectification of Mistake filed on the ground of non-consideration of points raised but not considered by merely recording the self-serving findings as if it has no jurisdiction and that the appellant had not raised such question before it even when all the documents were placed before it for its consideration?

4. Earlier, vide Final Order No.40046/2019 dated 10.01.2019 CESTAT dismissed Customs Appeal No.C/379/2012-DB, thereby confirmed Order in Original No.4/2012 dated 16.4.2012 passed by the Commissioner of Customs, Tiruchirapalli. Operative portion of the impugned order reads as under:-

> 5.2 In the statement of facts filed along with the Appeal Memorandum or even in the grounds-of-appeal, the appellant does not dispute its own classification and only in the synopsis filed does the appellant canvass contrary to its own stand on the classification by alleging that the classification by the Revenue under CTH 8904 was wrong while the proper classification should have been either under CTH 8901 or 8905. There are no disputes as regards raising new grounds or additional grounds at any stage, but the peculiarity of the case is that the Revenue has only acted upon the appellant's submission; the Revenue has gone by the appellant's own classification in the first available document viz., the Bill- of-Entry, where the classification is categoric and thus, based on such Bill-of-Entry, Show Cause Notice was issued. Considering the reply, Order-in-Original has also been passed, which thereafter has been subjected to appeal, on which Final Order has also been passed only after considering the documents placed on record including the above Bill-of-Entry. At

this stage, it is clear that even the Adjudicating Authority lacks jurisdiction as he has become functus officio. Now when argued differently, that too contrary to the basic document i.e., the Bill-of-Entry, it is difficult to accept since the argument runs counter to Bill-of-Entry.

5.3 The Revenue/Adjudicating Authority having considered the most crucial document namely, the Bill-of- Entry, did not cause any enquiries as regards the classification of the boat in question, obviously because the same was done so by the appellant itself who chose not to deviate from its stand at any stage. Hence, going by the documents, a finding has been arrived at since CTH 8904 falls under Chapter 89. Therefore, we are of the firm view that entertaining the plea for re- classification is not only against a document, but also clearly beyond our jurisdiction.

6.1 The appellant has also raised another ground in its application for rectification of mistake which is regarding exemption under Notification No. 21/2002-Cus. and has alleged at paragraph 7 of the rectification application that "the Tribunal completely omitted to take note of and consider leading to the apparent error on account of point raised not considered".

6.2 On going through the statement of facts, the grounds-of-appeal and even the additional grounds, we do not see any plea with regard to that and even the synopsis filed by the appellant is silent on this. Hence, the finding/conclusion is arrived at by the Bench on the basis of the grounds and arguments/synopsis; the allegation as to omission to consider the same is devoid of any merits and therefore, misconceived.

7. In view of the above discussions, the Final Order No. 40046 of 2019 dated 10.01.2019 does not suffer from any error, much less an error apparent on the record that can be rectified. We have given our findings based on the documents available on record and under the guise of rectification of mistake, we cannot take a different view now, which is not permissible, but the same is open to challenge as per law if any of the parties feel aggrieved.

8. Hence, we do not find any merit in the Miscellaneous Application for rectification of mistake; the same is rather misconceived and is therefore dismissed."

5. The brief facts of the case are as the appellant herein had imported a "Used Work Boat" (ASL Gallant) in connection with several dredging projects along with complete spare parts, accessories and on a temporary basis for being re-exported after completing dredging projects at the eastern-coast of India which was carried out with the use of cutter suction dredger.

6. The appellant had filed Bill of Entry No.224/2011 dated 28.10.2011 and declared the “work boat” under sub-heading 89040000 of the Customs Tariff Act, 1975 from payment of Customs Duty under Notification No.21/2002-cus dt.01/03/2008 and Notification No.1/2011-CE dt.01/03/2011.

7. Pursuant to the aforesaid notification, the appellant paid customs duty at concessional rate of Rs.2,91,432/- and furnished a bank guarantee for remaining 95% of the duty amounting to Rs.55,37,213/- and re-exported the work boat (**“ASL Gallant”)** on **04.11.2011 from the Karaikal Port**.

8. It is the case of the appellant that before the final disposal of the Appeal vide final order No.40046/2019 in Customs Appeal No.379/2012 on 10.01.2019, the appellant filed a Miscellaneous Application on 16.01.2014 seeking leave to raise additional grounds and had also filed synopsis along with relevant Tariff extracted from the Customs Tariff Act, notification, judgments, and write up, photography and opinion of expert, etc.

9. However, without considering the same, the Tribunal has dismissed the appeal vide its Final Order No.40046/2019 on 10.01.2019. It is therefore submitted that the appellant was constrained to move the application in M.A.No.40564/2019 under Section 129B of the Customs Act, 1962 r/w Rule 28 C of the CESTAT, (Procedure) Rules, 1982 which has been rejected vide impugned order.

10. The learned counsel for the appellant has placed reliance on the following decisions:-

i) **Honda Siel Power Products Ltd. vs. Commissioner of Income Tax, Delhi,** 2008(221) E.L.T.11(S.C.)
ii) **Roots Multiclean Ltd. vs. CESTAT, Chennai,** 2016(336) E.L.T.25(Mad.)
iii) **GE & D India Ltd., vs. Commissioner of C.Ex.& S.T., Chennai,** 2020(34) G.S.T.L.176(Mad.)
iv) **Sree Daksha Property Developers Pvt. Ltd. vs. C.C.E.Coimbatore,** 2016(44) S.T.R.236(Mad.)
v) **Lachman Dass Bhatia Hingwala (P.)Ltd. vs. Asstt.Commr.of Income Tax,** 2016(344) E.L.T.875 (Del.)

11. The learned counsel for the respondent submits that the appellant was not entitled to the benefit of the above mentioned notification based on the classification adopted in the Bill of Entry and therefore the appellant should pay the differential duty of Rs.8,057,380/- and thus issued show cause notice under Section 28 of the Customs Act, 1962 on 06.06.2012.

12. The said Show Cause Notice was confirmed by the respondent vide Order in Original No.04/2012 dated 16.11.2012. Thus, the appellant filed Customs Appeal No.379 of 2012 before the CESTAT which came to be dismissed by the Tribunal on 10.01.2019 .

13. Heard the learned counsel for the appellant and the learned counsel for the respondent.

14. We have perused the appeal filed by the appellant seeking to raise the additional grounds. A Miscellaneous Application for raising the additional grounds is said to have been filed on 16.01.2014. However it bears the seals dated 11.12.2018 and 26.09.2019 of CESTAT. The

aforementioned Miscellaneous Application was not numbered. Further, the date 11.12.2018 has also been scored off.

15. As against the **Final Order No.40046/2019** dated 10.01.2019 in **Appeal No.C/00379/2012**, the appellant could not have filed an appeal before this Court in view of specific bar under Section 130 of the Customs Act, 1962.

16. Instead, a Customs Miscellaneous Application (ROM) No.40253 of 2019 was filed under Section 129B (2) of the Customs Act, 1962 r/w Rule 28 C of the CESTAT, (Procedure) Rules, 1982, on the ground that there was an error apparent on the face of record in the Final Order No.40046/2019 dt.10.01.2019 of CESTAT in Appeal No.C/00379/2012.

17. Only in Customs Miscellaneous Application (ROM) No.40253 of 2019 the appellant has taken a plea that the appellant was entitled to the benefit under Notification No.27/2008-Cus dated 01.03.2008. In the Synopsis dt. 10.12.2018, although there is a whisper about the

Miscellaneous Application purportedly filed on 16.01.2014, for raising additional grounds, there is no reference to the same in the Final order No.40046/2019 dt. 10.01.2019. Question of altering the classification declared in the Bills of Entry cannot be allowed at the stage of Appeal, even if such a Miscellaneous Application was filed and numbered or allowed to raise additional grounds to that effect. We are fortified by the views of the Hon'ble Supreme Court in ***Priya Blue Industries Ltd. vs. CC 2004 (172) E.L.T. 145 (SC)*** which was followed in ***Commissioner of Customs, Bangalore vs. BPL Telecom Ltd 2015(325) E.L.T. 467 (S.C.)*** wherein it was held that classification issue having already been settled earlier, refund claim is not maintainable. Similarly, once classification was accepted, question of it being altered at the appellate stage is impermissible.

18. Further, since the dispute in the present case relates to the rate of duty as to whether the appellant was entitled to the benefit of Notification No.27/2008-Customs dated 01.03.2008 and Notification No.01/2011-CE dated 01.03.2011 which relates to the rate of duty, the present appeal filed by the appellant under Section 130 of the Customs

Act, 1962 is also as such not maintainable.

19. We are therefore of the view, no substantial questions of law that arises for consideration in this appeal and therefore the present appeal filed by the appellant against the impugned order rejecting the application for rectification of mistake on the ground that error apparent on the face on record is liable to be dismissed.

20. In view of the above, this Civil Miscellaneous Appeal is liable to be dismissed and it is accordingly dismissed. Leaving it open for the appellant to work out remedy before the Hon'ble Supreme Court .

(R.S.K.J.,) (C.S.N.J.,)

19.10.2024

Index : Yes/No
Internet : Yes/No
Speaking : Non Speaking Order
Neutral Citation : Yes/No
kkd

R.SURESH KUMAR,J.
AND
C.SARAVANAN.J.

kkd

To

The Commissioner of Central Excise,
No.1, Williams Road, Cantonment,
Trichy.

C.M.A.No.1444 of 2020

19.10.2024