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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2024

CORAM

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

C.M.A.No.1356 of 2020

The Commissioner of Customs,
Chennai - III Commissionerate,
Custom House,
No.60, Rajaji Salai,
Chennai - 600 001. ... Appellant

-Vs-

M/s.JSW Steel Limited,
JWS Centre,
Bandra Kurla Complex,
Bandra East,
Mumbai - 400 061.
Maharashtra ... Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 130 of the Customs Act, 1962 against the impugned Final Order No.41710 of 2018 dated 02.05.2018.

For Appellant	:	Mr.Rajinish Pathiyil Senior Standing Counsel
For Respondent	:	Mr.Raghavan Ramabadran for Lakshmi Kumaran and Sridharan Attorneys

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J U D G M E N T

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

This civil miscellaneous appeal is directed against the impugned Final Order No.41710 of 2018 dated 02.05.2018 passed by the Customs, Excise and Service Tax Appellate Tribunal, Chennai in Appeal No.C/41511/2017-DB.

2. By the impugned order, the appeal filed by the respondent / assessee before the Customs, Excise and Service Tax Appellate Tribunal, Chennai has been allowed. The dispute relates to availability of benefit of Customs Notification No.104/2009 dated 14.09.2009. The Tribunal has followed its own order in the respondent / assessee's own case reported in **2016 (340) ELT 262**. The operative portion of the impugned order reads as under:

> *"3. The issue that arises for consideration in this appeal is whether the appellant is eligible for clearance of the imported goods under SHIS scheme as per Customs Notification No.104/2009 dated 14.09.2009. The said issue has been elaborately dealt by the Tribunal in the appellant's own case reported in 2016 (340) ELT 262 (Tri. Chennai), wherein the Tribunal rejected the appeal of the Revenue holding*

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that the importer is eligible for benefits of the above notification under SHIS scheme for the clearance of the imported goods.

4. Following the above order of the Tribunal, we hold that the appellant is eligible for the benefit of the Notification. The impugned order is set aside and the appeal is allowed with consequential relief, if any."

3. The substantial question of law raised in this appeal reads as under:

"Whether the CESTAT was right in holding the goods imported by the importer as capital goods for the purpose of the Notification No.104/2009 dated 14.09.2009 by following the earlier order, without discussing the distinction made on facts by the Adjudicating Authority in the Order-in-Original."

4. Having considered the submissions made by the learned Senior Standing Counsel for the appellant and the learned counsel for the respondent and having considered the text of the above Notification No.104/2009 dated 14.09.2009, it is evident that the dispute relates to eligibility of exemption under the aforesaid Customs Notification. As per Section 130-E of the Customs Act, 1962, such appeal have to be filed only before the Hon'ble Supreme Court,

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therefore, this Civil Miscellaneous Appeal is liable to be dismissed, accordingly, it is dismissed leaving open to the appellant to work out his remedy, if he is advised to do so in accordance with law. No costs.

(R.S.K., J.) **(C.S.N., J.)**
21.11.2024

NCC : Yes / No
Index : Yes / No
Speaking Order : Yes / No

vji

To

The Customs, Excise and Service Tax Appellate Tribunal,
Chennai.

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

vji

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