IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.02.2024

CORAM

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

Civil Miscellaneous Appeal No. 831 of 2022

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

Versus

S.P. Associates,
1/11959, Uldhanpur
Naveen Shahdara
North East, Delhi-110 032. .. Respondent

Civil Miscellaneous Appeal filed under Section 130 of the Customs Act, 1962, praying to set aside the Final order No. 41931 of 2021 dated 27.08.2021 passed by the Customs, Excise and Service Tax Appellate Tribunal, Chennai.

For Appellant	:	Mrs. R. Hemalatha
For Respondent	:	Mr. Viswanathan

JUDGMENT

The present Civil Miscellaneous Appeal is directed against the order dated 27.08.2021 passed by the Customs, Excise & Service Tax Appellate Tribunal, Chennai, in Final Order No.41931 of 2021, raising the following substantial questions of law:

"i) Whether on the facts and circumstances of the case, the CESTAT is right in allowing redemption for home consumption, despite admitting the fact that the condition of para 2.31 of the Foreign Trade Policy are not satisfied?

ii) Whether on the facts and circumstances of the case, the finding of the CESTAT that the Electronics and Information Technology Goods (Requirement of Compulsory Registration) Order, 2012 (CRO, 2012) is beyond the Act and Rules is erroneous or not, on the face that the CRO itself is formulated under the provisions of Bureau of Indian Standards Act (BIS Act), which regulates the imported goods as well?

iii) Whether on the facts and circumstances of the case, the CESTAT is right in overlooking the CRO, 2012, which covers Multifunctional and Printers/ Devices (MFDs) along with printers and plotters?"

2. According to the appellant, the respondent herein submitted Bill of Entry No.2706447 dated 04.04.2019 for clearance of imported consignments viz., 126 units of used Digital Multifunctional and Printers/Devices (MFDs) of various makes and models with standard accessories and attachments by classifying them under Customs Tariff Heading 84433100. Upon examination of the goods on first check appraisal in the presence of a Chartered Accountant and on perusal of the documents and the Chartered Engineer's verification report, the officials of the appellant department came to the conclusion that the goods are liable for confiscation in terms of Section 111 (d), 111 (m) and 111 (o) of the Customs Act, 1962 for contravening the provisions of Hazardous and other Waster (Management & Trans Boundary Movement) Rules, 2016, E-waste (Management) Rules, 2016

and the Bureau of Indian Standards Act, 1986 read with Electronics and IT Goods (Requirement of Compulsory Registration) Order, 2012 as well as the provisions of Foreign Trade Policy 2015-20 read with Foreign Trade (Development and Regulation) Act, 1992 read with Section 11 of the Customs Act, 1962 for the mis-declaration of value and quantity of goods imported. A show cause notice dated 20.06.2019 was issued by the appellant proposing to confiscate the goods under Section 111 (d) and 111 (m) of the Customs Act, 1962 and proposing imposition of penalty under Section 112 (a) and 117 of the Customs Act, 1962. In the meantime, the respondent filed WP No. 12846 of 2019 seeking a direction to the appellant to assess and clear the goods upon payment of applicable duties on value, as determined by the Chartered Engineer. By order dated 25.06.2019, the said writ petition came to be allowed by directing the department to conduct adjudication of consignment in terms of the applicable statutory provisions. Pursuant to such order, an order was passed determining the value of the goods as Rs.23,10,504/- in terms of Rule 9 of CVR 2007 and further ordered confiscation of 136 units of goods and imposed penalty of Rs.2,30,000/- under Section 112 (a) and redemption fine of Rs.3,50,000/- under Section 125 of the Customs Act together with penalty of Rs.25,000/- under Section 117 of The Customs Act. Aggrieved by the said order, an appeal was filed and it was partly allowed on 30.12.2020 modifying the order by reducing the redemption fine and penalty. As against the said order dated 30.12.2020, the appellant filed an appeal before the Tribunal and it was dismissed on 27.08.2021. Challenging the same, the present appeal is filed by the appellant.

3. Today, when the appeal was taken up for consideration, the learned counsel appearing for both sides, in unison, submitted that the issue involved in this appeal is covered by the judgment of the very same Bench in C.M.A. Nos. 316 of 2022 etc. batch, dated 15.02.2024. The relevant portion of the said judgment reads as follows:

> *"7. Aggrieved by the common order of the Tribunal, the Revenue carried the matter in appeals by way of a batch of matters including C.M.A 316 of 2022 which as stated supra, is taken as lead matter. It may be relevant to note that the present issue had engaged the attention of various forums including the High Courts across the country including that of Andhra Pradesh, wherein writ petitions were filed assailing the actions of the Customs authorities in detaining the containers and refusing clearance thereof on the pretext of applicability of Electronics and Information Technology Goods (Requirement for Compulsory Registration) Order, 2021. The Andhra Pradesh High Court found that previous consignments had been released after penalty has been paid and thus, found no reason as to why later consignments have been withheld. The relevant portion of the Andhra Pradesh High Court order is extracted hereunder:*
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> > *"There is no explanation forthcoming as to the contradiction between the Foreign Trade Policy 2015-20 which came into effect from 01.04.2015 and the notification dated 17.01.2017. It is however an admitted fact that the petitioner firm suffered the Order-in-Original dated 05.07.2017 passed by the Joint Commissioner of Customs, Kolkata, confiscating its first consignment under Sections 111(d) and 111(m) of the Customs Act, 1962 but permitting it the option of redeeming the said*

goods on payment of fine of Rs.3,30,000/- under Section 125 thereof and penalty of Rs. 1,45,000/- under Section 112(a) thereof. The petitioner firm admits that it paid the aforestated fine and penalty in Para 3 of the writ affidavit. This order therefore attained finality. That being so, there is no reason as to why the later consignments of the petitioner firm, which have been withheld, should not be treated alike.

......

Sri P.Gangaiah Naidu, learned senior counsel, would state the petitioner firm would once again furnish all the documents as stipulated in the Rules of 2016. As and when the petitioner firm produces the documents, the Customs Authorities shall consider the same in the light of the statutory regime under the Act of 1962 and the notifications issued thereunder, keeping in mind the earlier Order-in-Original dated 05.07.2017 passed by the Customs Authorities at Kolkata in like circumstances, and consider the petitioner firm's plea for release of the two consignments in accordance with law. This exercise shall be completed within one week from the date of furnishing of documents by the petitioner firm."

8. The matter was carried by way of SLP by the Revenue. The Special Leave Petitions and the Civil Appeal were disposed of by the Hon'ble Supreme Court after finding that the goods in question were already released on payment of penalty:

"Today, when this batch of matters are taken up for further hearing, learned counsel appearing on behalf of the respondent has pointed out that, in the year 2017, the goods in question have been released on payment of penalty. Learned counsel appearing for the Revenue is not in a position to dispute the same.

In that view of the matter, when the goods in question are already released by the Department on recovery of the penalty, we dismiss all these Special Leave Petitions and Appeals, keeping the question of law open.

Consequently, all these Special Leave Petitions and Appeals stand dismissed. However, question(s) of law, if any, is/are kept open."

9. It is submitted by both the learned counsel for the appellant as well as the Respondent in all these cases that the goods have been released on payment of duty and other dues, as per the order of the Tribunal.

10. In view of the above submission, following the order of the Hon'ble Supreme Court as referred to above, we dismiss this batch of appeals keeping the questions of law open to be adjudicated in *appropriate proceedings. No Costs. Consequently, connected miscellaneous petitions are closed."*

It is also submitted by both the counsel that the goods have already been released on payment of duty and other dues, as per the order of the Tribunal.

4. In the light of the above judgment mentioned supra, this Civil Miscellaneous Appeal stands dismissed, keeping the substantial questions of law involved herein open to be adjudicated in appropriate proceedings. No costs.

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

29.02.2024

Neutral Citation: Yes/No
Speaking Order: Yes/No
Index:Yes/No
mka/ spp

To

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

2.The Commissioner of Customs,
Chennai-II Customs Commissionerate,
Customs House, No.60, Rajaji Salai,
Chennai-600 001.

R.MAHADEVAN, J
and
MOHAMMED SHAFFIQ, J

mka/spp

C.M.A. No.831 of 2022

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