IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2024

CORAM

THE HON'BLE MR.JUSTICE R.SURESH KUMAR
AND
THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.Nos.1384, 1367, 1370, 1371, 1372 and 1373 of 2021
and C.M.P.Nos.7032, 7044, 7046, 7045 and 7049 of 2021

The Commissioner of Customs
Chennai II Commissionerate
No.60, Rajaji Salai, Chennai 600 001. ... Appellant in all the appeals

-Vs-

Shyam Textiles Ltd
Survey No.335/1/35/2, 344/b1 & 344/b2
Ulumaranapalli, Near Gumlapuram Village
Tally Post, Denkanikottai - 635 119
Tamil Nadu ... Respondent in CMA 1384/2021

Tarajyoth Polymers Ltd
Archana Complex, No.37/12-1
4th Cross, Lalbagh Road,
Bangalore 560 027, Karnataka ... Respondent in CMA 1367/2021 and CMA 1372 of 2021

Kamdhenu Polymers Pvt Ltd
Archana Complex, No.37/12-1
4th Cross, Lalbagh Road
Bangalore - 560 027, Karnataka ... Respondent in CMA 1370/2021 & 1371 of 2021

Pradeep Industrial Packers Pvt Ltd
A-16, 2nd Stage, Peenya Industrial
Estate, Bangalore - 560058, Karnataka. ... Respondent in CMA 1373/2021

Appeals under 130 of the Customs Act, 1962 against the order dated 11.03.2019 in Final Order Nos. 40481, 40482,40485,40486, 40483, 40484 of 2019 on the file of the Customs, Excise and Service Tax Appellate Tribunal, Chennai.

In all CMAs

For Appellant : Mr.A.P.Srinivas
Senior Standing Counsel

For Respondent : Mr.Joseph Prabakar

COMMON JUDGMENT

(Delivered by R.SURESH KUMAR,J.)

These appeals are against the order dated 11.03.2019 passed by the Customs, Excise and Service Tax Appellate Tribunal, Chennai, by raising the following substantial question of law:

" Whether the Tribunal is correct in allowing the appeals filed by the assessee/importers by holding that the condition No.(iii)(a) of the Notification No.17/2009-Customs dated 19.02.2009 is applicable w.e.f.19.02.2009 only?"

2. Since these appeals arise out of the common order passed by the Customs Excise and Service Tax Appellate Tribunal (In short 'CESTAT') dated 11.03.2019, all these appeals were heard together and are disposed of by this common judgment.

3. The issue relates to import of plastic granules of various grades under Transferred Duty Free Import Authorisation Scheme (in short 'DFIA Scheme') read with Notification No.40/2006-Customs dated 01.05.2006 regarding the imports which were cleared prior to 19.02.2009. Thereafter, a notification was issued in Notification No.17/2009-Cus dated 01.09.2009 amending Condition No.3 of the earlier notification and introducing Condition Nos.3A and 3B. Further, by Section 93(1) of the Finance Act, 2009 the amendment was given retrospective effect with effect from 01.05.2006.

4. Only in that circumstances, several writ petitions had been filed before this Court challenging such an amendment giving retrospective effect to those conditions with effect from 01.05.2006 in W.P.Nos.8334 of 2013 etc., batch by the respondents herein / assessees.

5. A Division Bench of this Court, by order dated 01.11.2017 disposed of those writ petitions in the matter of **Tarajyoth Polymers Ltd., -Vs- Union of India** reported in **(2018) 359 ELT 678 (Mad)**, where, the amendment giving retrospective effect from 01.05.2006 has been set aside by allowing the said writ petitions.

6.During that point of time, when the law has been upheld by the Division Bench of this Court in **Tarajyoth Polymers Ltd., -Vs- Union of India** cited supra, the batch of cases had been disposed of or decided by the CESTAT through the impugned order, where, this Court's judgment in **Tarajyoth Polymers Ltd., -Vs- Union of India** has been followed by the Tribunal and accordingly the appeals filed pertaining to the period prior to 19.02.2009 were allowed and the appeals filed after the cut-off date ie., 19.02.2009 were deferred for hearing. That is the impact of the order impugned herein, as against which, the Revenue preferred these miscellaneous appeals on the afore stated questions of law.

7. It is to be noted that the Tribunal, in fact, in the impugned order has also pointed out that as against the order passed by the Division Bench of this Court in **Tarajyoth Polymers Ltd., -Vs- Union of India** cited supra, no appeal had been filed by the Revenue. The fact remains that as against the said order dated 01.11.2017 of the Division Bench of this Court in W.P.Nos.8794 of 2013 etc., batch, appeals have been filed by the Revenue before the Hon'ble Supreme Court in S.L.P.(Civil) Nos.30519 of 2018 etc.,

8. It is to be noted that the said batch of Special Leave Petitions have been finally disposed of by the order of the Hon'ble Supreme Court dated 11.04.2023, where, the following orders were passed:

> *" This Court is of the opinion that having regard to the peculiar circumstances, no cause for interference with the impugned judgment is made. The Special Leave Petitions are, accordingly, dismissed leaving the question of law open."*

9. Since the Special Leave Petitions filed against the judgment of this Court have been dismissed by order dated 11.04.2023, and as on date the prevailing law on this point would be **Tarajyoth Polymers Ltd., -Vs- Union of India** alone. Since that has been followed by the Tribunal in dismissing these cases through the impugned order, we do not find any error in the said order passed by the Tribunal. Hence, all these appeals are dismissed and the questions of law are answered in favour of the assessee and as against the Revenue. No costs. Consequently, connected miscellaneous petitions are closed.

(R.S.K.,J.) **(C.S.N.,J.)**
06.11.2024

NCS : Yes/No
Index : Yes/No
KST

To

The Customs Excise and Service Tax
Appellate Tribunal, Chennai.

R.SURESH KUMAR, J.

AND
C.SARAVANAN, J.

KST

C.M.A.Nos.1384, 1367, 1370,
1371, 1372 and 1373 of 2021

06.11.2024