BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN
and
THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

W.A.(MD)No.376 of 2019
and
C.M.P(MD)No.3330 of 2019

Deepak Bajaj ... Appellant/Petitioner

Vs

The Commissioner of Customs,
New Harbour Estate,
Tuticorin. ... Respondent/Respondent

Prayer:

This Writ Appeal is filed under Clause 15 of the Letters Patent, to set aside the impugned order dated 13.12.2018 passed by the learned Single Judge of this Court in W.P.(MD)No.20021 of 2018.

For Appellant : Mr.A.Hari Radhakrishnan

For Respondent : Mr.R.Baskaran
Additional Advocate General-VI
assisted by Mr.G.Suriyananth
Additional Government Pleader

JUDGMENT

[Judgment of the Court was made by RMT.TEEKAA RAMAN, J.]

This Writ Appeal is filed against the order passed by this Court in W.P.(MD)No.20021 of 2018, dated 13.12.2018.

2.The unsuccessful petitioner is the appellant herein. The Department of Revenue Intelligence, (DRI) Mumbai, had initiated an investigation against M/s.Suvidh Overseas with respect to the import of textile fabrics duty-free. The allegation of the DRI is that the textile fabrics were cleared using the DEEC license, which has an 'Actual User' condition and instead of manufacturing and exporting, the same were diverted locally into the Indian market. Accordingly, the DRI had issued a show cause notice dated 18.05.2007 to M/s. Suvidh Overseas, the appellant and other notices proposing to confiscate the seized goods. The DRI had issued another show cause notice dated 24.10.2008 proposing to demand customs duty jointly and severally from M/s.Suvidh Overseas, Shri. Kuresh T. Rajkotwala and the appellant. The said notice further proposed to impose a penalty on the appellant and other notices. However, the respondent has passed the impugned order-in-original, demanding duty and imposing penalty under Section 114A of the Customs Act, 1962. Subsequently, the respondent has issued a corrigendum dated 30.05.2018 wherein, he changed the Section for imposing penalties from 114A to 112(a) of the Customs Act, 1962. The appellant filed W.P.(MD)No.20021 of 2018, before this Court challenging the impugned order dated 23.03.2018 on the ground that the officers of the Directorate of Revenue Intelligence (DRI) have no jurisdiction to issue show cause notice. The learned Single Judge, vide order dated 13.12.2018 disposed of the said writ petition on the ground that the appellant had not challenged the virus or validity of Section 28(11) of the Customs Act 1962 and further directed the appellant to file a statutory appeal. Aggrieved by the said order, dated 13.12.2018, the present writ appeal is being filed.

3.Pending the writ appeal, the Hon'ble Supreme Court of India in the case of ***Commissioner of Customs Vs. M/s Canon India Private Limited [Review Petition No.400 of 2021, dated 07.11.2024],*** at para 168 in clause No.(vi)(c), has held that *"Where the orders-in-original passed by the adjudicating authority under Section 28 have been challenged before the High Courts on the ground of maintainability due to lack of jurisdiction of the proper officer to issue show cause notices, the respective High Court shall grant eight weeks' time to the respective assessee to prefer appropriate appeal before the Customs Excise and Service Tax Appellate Tribunal (CESTAT)."*

4.In view of the decision of the Hon'ble Apex Court, now the validity of the action of the DRI in issue show cause notice being appealed, the appellant has to approach the appellate authority namely, the CESTAT Act. Hence, in view of the Judgment of the Hon'ble Supreme Court of India, we find that there is no merit in continuing the case and as directed by the Hon'ble Supreme Court of India.

5.With the above observations, this Writ Appeal is dismissed with liberty to the appellant to approach the said CESTAT Act, within a period of eight weeks as contained in the above clause, from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

[T.K.R., J.] [N.S., J.]
19.11.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
sji

To

1.The Commissioner of Customs,
New Harbour Estate,
Tuticorin.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

RMT.TEEKAA RAMAN, J.
and
N.SENTHILKUMAR, J.

sji

W.A.(MD)No.376 of 2019

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