**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : **15.03.2024**

CORAM:

THE HONOURABLE **MRS.JUSTICE V.BHAVANI SUBBAROYAN**
and
THE HONOURABLE **MR.JUSTICE K.K.RAMAKRISHNAN**

**C.M.A.(MD).No.14 of 2024**
**and**
**C.M.P.(MD).Nos.241 of 2024**

The Commissioner of Customs,
Custom House,
New Harbour Estate,
Tuticorin – 628 004 ... Appellant

Vs.

M/s.Srinidhi Fabrics Private Limited,
No.18, Thirunagar Colony,
Erode – 638 007,
Tamilnadu. ... Respondent

**Prayer**: Civil Miscellaneous Appeal is filed under Section 130 of the Customs Act, 1962, to set aside the common final order No.40553-40578/2017, dated 05.04.2017 passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai.

For Appellant : Mr.N.Dilip Kumar

For Respondent : Mr.B.Venugopal

**J U D G M E N T**

(Judgment of the Court was delivered by
**V.BHAVANI SUBBAROYAN, J.**)

This Civil Miscellaneous Appeal is filed by the appellant challenging the common final order No.40553-40578/2017, dated 05.04.2017, passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai.

2. The brief facts of the case are as follows:

(i)The respondent M/s.Srinidhi Fabrics Private Limited(Importer) have imported “Benninger open width pad-dry continuous dyeing range with micro processor type:Bicoflexl-Al-1RG-TH54-1800 with accessories vide BE No.904056 dated 12.06.2006. The importer availed Countervailing Duty(CVD) exemption of Rs. 81,77,526/- in terms of List 2 of Sl.No.3 of Notification 06/2006-CE dated 01.03.2006 on the ground that the imported dyeing machine is complete with dye kitchen and accessories inasmuch as the complete dye kitchen is in built in the fully automated dyeing machine. Directorate of Revenue Intelligence(DRI), Tuticorin, on intelligence that the imported machine was not complete with dye kitchen and accessories, investigated the matter.

(ii)After due process of law, the Commissioner of Customs, Custom House, Tuticorin passed order in Original (OIO) No.42/2007 dated 15.06.2007 and demanded the differential duty of Rs.81,77,526/- along with interest, ordered to invoke bank guarantee of Rs.80 lakhs towards payment of CVD and ordered the importer to remit the differential CVD of Rs.1,77,526/- along with interest within 10 days from the receipt of the order. The imported machine was confiscated and redemption fine of Rs.2,00,000/- was imposed on the importer. Penalty of Rs.1 lakh was also imposed on the importer under Section 112 of Customs Act, 1962. Aggrieved by the above order, the Department filed appeal before CESTAT, Chennai, for enhancing the penalty amount.

(iii) The CESTAT without going into the merits of the case, has only considered the issue of jurisdiction of Directorate of Revenue Intelligence (In short 'DRI') and remanded the case to original adjudicating authority to first decide the issue of jurisdiction and then decide the case on merits. Challenging the same, the appellant has filed this appeal.

3. The learned counsel appearing for the appellant would contend that the Tribunal failed to consider the facts of the issue and simply remanded the case by relying on the decision in ***BSNL vs. UOI in W.P.No.C/4438/2017 and CM.No.19387/2017,*** to the original adjudicating authority and the same is not proper.

4. The learned counsel appearing for the appellant would further contend that the Tribunal is erred in remanding the case, when the issue regarding jurisdiction of the DRI to issue show-cause notice is *sub judice* before the Hon'ble Apex Court in the case of ***M/s.Mangali impex Ltd., vs. UOI reported in 2016(335) ELT 605 (Del.),*** wherein it is observed that 'the Officers of DRI is not competent as proper officer to

initiate demand action under Customs Act, 1962'. As against the same, the Department has filed Special Leave Petition before the Hon'ble Supreme Court wherein the Hon'ble Supreme Court has stayed the operation of the said impugned order and therefore, the impugned order of the Tribunal is liable to be set aside.

5. In support of his submissions, the learned counsel appearing for the appellant has relied on the following decisions:

(i)Commissioner of Customs vs. Sanket Praful Tolia reported in (2021) 378 ELT 11 Mad;

(ii)Commissioner of Customs vs. R.Natarajan reported in (2022) 380 ELT 73 Mad;

(iii)Commissioner of Customs vs. CESTAT reported in (2019) 31 GSTL 33 Mad;

(iv) Commissioner of Customs ACC Import vs. Kajaria Ceramics Ltd., reported in (2024) 15 Centax 473 (Del); and

(v) Commissioner of Customs vs. ATAM Fibres Pvt. Ltd., reported in (2019) 25 GSTL 14 (P& H).

6. The substantial question of law arises for consideration in this writ appeal is as follows:

> *"When Section 28(11) of Customs Act, 1962, envisages that all persons appointed as officers of Customs under sub-Section (1) of Section 4 before the 6th day of July 2011, shall be deemed to have and always had the power of assessment under Section 17 and shall be deemed to have been and always had been the proper officers for the purpose of this Section, whether CESTAT is correct in disputing/questioning the jurisdiction of the DRI to issue show-cause notice?*

7. We have heard the learned counsel appearing on either side and perused the materials placed before us.

8. The issue raised in this appeal had already been dealt with by this Court in ***Commissioner of Customs vs. Sanket Praful Tolia (cited supra)***, where the same substantial question of law has been raised, the Hon'ble Supreme Court has held as follows:

> *6. In the case of the Commissioner of Customs, Tuticorin v.* C.M.A.Nos.1372, 1382 and 1383 of 2022 *The Customs, Excise & Service Tax Appellate Tribunal and others[C.M.A.(MD).Nos.375 to 379 of 2018] [2019 (31) G.S.T.L.33 (Mad.)], a Division Bench of this Court, to which one of us (T.S.Sivagnanam, J.) was a party, had an occasion to test the correctness of an identical order passed by the Tribunal and by a common Judgment, dated 4-10-2019, set aside the order of the Tribunal and restored the appeals to the file of the Tribunal to be kept pending and await the decision of the Hon'ble Supreme Court. It was also made clear that the appellant - Department shall not initiate any coercive action against therespondents/assessees. The operative portion of the said Judgment reads as follows:*
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> > *"3. In these appeals, the Revenue has raised the following substantial questions of law,*
> >
> > *(i) as to whether the Tribunal was right in allowing the appeals on the ground that the jurisdiction issue has to be decided by the Hon'ble Supreme Court in the appeal filed against the decision of the High Court of Delhi, in the case of **Mangali Impex vs. Union of India** reported in 2016(335)E.L.T.605(Del.);*
> >
> > *(ii) The next question is as to whether the Tribunal was right in allowing the appeals and simultaneously directing status quo to be maintained till a final decision is arrived at.*
> >
> > *4. Identical orders were tested for its correctness in the Principal Bench to which one of us (T.S.S., J.) is a party. After elaborate arguments, the Court held that the Tribunal was not justified in allowing the appeal and consequently directing status quo till the final decision of the Hon'ble Supreme Court and the appropriate procedure that should have been adopted is to keep the appeals pending and await the decision of the Hon'ble Supreme Court in the appeals filed against the decision in Mangali Impex. Therefore, we are inclined to take similar view in these appeals as well. Accordingly, the appeals filed by the Revenue are allowed and the order passed by the Tribunal is set aside and the appeals are restored to file of the Tribunal and the Tribunal shall keep the appeals pending and await the*

*decision of the Hon'ble Supreme Court. It is made clear that the Department shall not initiate any coercive action against the respondents assessees and await final decision in the appeals, which have been restored to file of the Tribunal. No costs."*

*7. We find that the above decision can be fully madeapplicable to the facts of the present case as the orders impugned in these appeals are identical to that of the orders impugned in C.M.A.(MD) Nos.375 to 379 of 2018."*

9. The said decision is squarely applicable to the present case. Accordingly, this Civil Miscellaneous Appeal, is allowed and the impugned order No.40553-40578/2017, dated 05.04.2017, passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai, is set aside with a direction to keep the appeal pending await the decision of the Hon'ble Supreme Court in *Mangali Impex's* (cited supra). It is made clear that the appellant – Department shall not initiate any coercive action against the respondent/assessee till the final decision in the appeal, which has been restored to the file of the Tribunal. The substantial question of law is left open. No Costs. Consequently, connected Miscellaneous Petition is closed.

**[V.B.S.,J.] [K.K.R.K.,J.]**
**15.03.2024**

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

PM

To

1.The Customs, Excise and Service Tax Appellate Tribunal,
South Zonal Bench,
Chennai.

2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

**V.BHAVANI SUBBAROYAN,J.**
**and**
**K.K.RAMAKRISHNAN,J.**

PM

**C.M.A.(MD).No.14 of 2024**

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