BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.03.2024

CORAM:

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

C.M.A.(MD)Nos.1 to 3 of 2022

The Commissioner of Customs,
Custom House,
New Harbour Estate,
Tuticorin – 628 004. : Appellant in all C.M.As.

Vs.

M/s.Pallava Textiles,
No.27-C, Sankari Bye-Pass Road,
Pallipalayam,
Erode,
Tamil Nadu – 638 006. : Respondent in C.M.A.(MD)No.1/2022

M/s.PKPN Spinning Mills Ltd.,
No.6, Bye-Pass Road,
Pallipalayam,
Erode,
Tamil Nadu – 638 006. : Respondent in C.M.A.(MD)No.2/2022

M/s.J.P.P.Mills,
S.F.No.411 & 412, Patharai Village,
Uppupalayam, Thiruchengodu Taluk,
Pallipalayam,
Erode,
Tamil Nadu – 638 008. : Respondent in C.M.A.(MD)No.3/2022

COMMON PRAYER: Civil Miscellaneous Appeals filed under Section 130 of the Customs Act, 1962, praying to set aside the impugned orders of the CESTAT in Common Final Order Nos. 40654/2018, 40656/2018 and 40657/2018 dated 14.03.2018 and remand / restore the appeals to the CESTAT for fresh consideration of the matters on merits, once the case of M/s.Mangali Impex reaches finality.

For Appellant : Mr.N.Dilip Kumar
For Respondent : Mrs.L.Maithili
[In all C.M.As.]

COMMON JUDGMENT
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[Common Judgment of the Court was delivered by
V.BHAVANI SUBBAROYAN, J.]

These Civil Miscellaneous Appeals have been filed challenging the common order passed by the Customs, Excise &

Service Tax Appellate Tribunal (CESTAT), Chennai in Final Order Nos.40654, 40656 and 40657 of 2018, dated 14.03.2018.

2.According to the learned Counsel for the appellant, the issue involved in the present Civil Miscellaneous Appeals has already been decided in C.M.A.(MD)No.1109 of 2021, dated 22.03.2024, wherein this Court after referring to the judgment in ***Commissioner of Customs vs. Sanket Praful Tolia reported in (2021) 378 ELT 11 Mad,*** has passed the following order:

> *"**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[CMA.(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 the respondents/assessees. The operative portion of the said Judgment reads as follows:

"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 made applicable to the facts of the present case as the orders impugned in these appeals are identical to that of the orders impugned in CMA.(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.40655/2018 dated 14.03.2018, 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 awaiting 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."*

3.In the light of the aforesaid judgment, these Civil Miscellaneous Appeals, are allowed and the impugned order in Final Order Nos.40654, 40656 and 40657 of 2018, dated 14.03.2018, passed by the Customs, Excise and Service Tax Appellate Tribunal, Chennai, is set aside with a direction to keep the appeals pending awaiting the decision of the Hon'ble Supreme Court in ***Mangali Impex vs. Union of India reported in 2016(335)E.L.T.605(Del.).*** It is made clear that the appellant – Department shall not initiate any coercive action against the respondent/assessee till the final decision in the appeals, which has been restored to the file of the Tribunal. The substantial question of law is left open. No Costs.

[V.B.S.,J.] & [K.K.R.K,J.]
22.03.2024

Neutral Citation : Yes/No
Index : Yes/No
Internet : Yes/No
MR

To

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

V.BHAVANI SUBBAROYAN, J.

and

K.K.RAMAKRISHNAN, J.

MR

JUDGMENT MADE IN

C.M.A.(MD)Nos.1 to 3 of 2022

22.03.2024