BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.10.2024

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN
AND
THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

C.M.A.(MD)Nos.895 & 896 of 2024 &
C.M.P.(MD)Nos.9613 & 9614 of 2024

The Commissioner of Customs,
Customs House, New Harbour Estate,
Tuticorin - 628 004. ...Appellant in both cases

vs.

M/s.Taher Impex Pvt. Ltd.,
F.No.1, No.27/e, Mazagaon Terrace,
27, Nesbit Road, Mazagaon,
Mumbai - 400 010.
... Respondent in C.M.A.(MD)No.895 of 2024

Kuresh Taherbhai Rajkotwalal,
Director, M/s.Taher Impex Pvt. Ltd.,
F.No.1, No.27/e, Mazagaon Terrace,
27, Nesbit Road, Mazagaon,
Mumbai - 400 010.
... Respondent in C.M.A.(MD)No.896 of 2024

Prayer in C.M.A.(MD)No.895 of 2024: Civil Miscellaneous Appeal filed under Section 130 of the Customs Act, 1962 praying to allow the appeal by setting aside the Final Order No.40011/2018 dated 03.01.2018 passed by the CESTAT.

Prayer in C.M.A.(MD)No.896 of 2024: Civil Miscellaneous Appeal filed under Section 130 of the Customs Act, 1962 praying to allow the appeal by setting aside the Final Order No.40012/2018 dated 03.01.2018 passed by the CESTAT.

In both appeals,

For Appellant	:	Mr.N.Dilip Kumar
For Respondent	:	Mr.Hari Radhakrishnan

COMMON JUDGMENT

(Judgment of the Court was delivered by P.VELMURUGAN, J.)

The present appeals have been filed to set aside the Final Order Nos.40011/2018 and 40012/2018 dated 03.01.2018 passed by the Customs, Excise & Service Tax Appellate Tribunal, Chennai.

2. The learned counsel appearing for the appellant in both the appeals would submit that in a similar matter in C.M.A.(MD)No.14 of

2024, this Court, where one of us, the Hon'ble Mr.Justice K.K.RAMAKRISHNAN is a party, has passed the following order on 15.03.2024.

"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:*
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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 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. 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."

3. In view of the above decision of this Court in a similar matter, the Civil Miscellaneous Appeals are also disposed on the same lines.

4. Accordingly, the Civil Miscellaneous Appeals are allowed and the Final Order Nos.40011/2018 & 40012/2018 dated 03.01.2018 passed by the Customs, Excise & Service Tax Appellate Tribunal, Chennai are set aside with a direction to keep the appeals pending, awaiting the decision of Hon'ble Supreme Court in Mangali Impex's case (cited

supra). It is made clear that the appellant Department shall not initiate any coercive action against the respondents / assessees till the final decision in the appeals, which have been restored to the file of the Tribunal. The substantial question of law is left open. No costs. Consequently the connected Miscellaneous Petitions are closed.

(P.V., J.) (K.K.R.K., J.)
04.10.2024

NCC:Yes/No
Index:Yes/No
Speaking/Non-speaking order

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To

1.The CESTAT,
No.26, Sashtri Bhavan Annexe Building,
Haddows Road,
Chennai - 600 006.

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

P.VELMURUGAN, J.
and
K.K.RAMAKRISHNAN, J.

mbi

C.M.A.(MD)Nos.895 & 896 of 2024

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