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In the Madras High Court

Case No : Writ Petition No. 10905 of 2015 and M.P. No. 1 of 2015

Carlisle Trading & Manufacturing (I) P. Ltd. APPELLANT

Vs

Dy. C.C. (SVB), Chennai RESPONDENT

Date of Decision : 08-06-2015

Acts Referred:

Citation : (2015) 325 ELT 318

Hon'ble Judges : T. Raja, J.

Bench : Single Bench

Advocate : A.R.L. Sundaresan, Senior Counsel, for the Appellant; A.P. Srinivas, Standing Counsel, for the Respondent

Judgement

T. Raja, J.—This Writ Petition has been filed by M/s. Carlisle Trading & Manufacturing (India) Pvt. Ltd., represented by its Country Director challenging the impugned order dated 10-3-2015 issued by the Deputy Commissioner of Customs, Chennai, inter alia contending that the respondent has passed the order without issuing notice whatsoever to the petitioner regarding the proposal to enhance the value without even following the remand directions issued by the learned Tribunal. Mr. AR. L. Sundaresan, learned senior counsel appearing for the petitioner drawing attention of this Court to paragraph 7 of the earlier Order-in-Original No. 20999 of 2013, dated 3-6-2013 emphatically submitted that when the order-in-original has taken a decision which is subjected to a periodical review after a period of three years directing the importer to come forward with necessary data before three months and on the expiry of the period of three years, making it clear that if no renewal is done, the order will stand expired and the Assessing Groups shall resort to Provisional Assessment with EDD equivalent to 15.122% of the assessable value, the respondent while rejecting the value declared by the petitioner cannot order for re-determination of the value by loading the same by 19.70% and adding further, he would submit that the said loading of 19.70% was more than the initial loading of 15% and therefore, the notice for enhancement, if at all, is required to be given to the petitioner and in the present case, admittedly when the respondent is proceeding beyond the direction given by the Tribunal in the Order-in-Original No. 20999 of 2013, dated 3-6-2013 for re-determining the value for loading the same by 19.70%, the impugned order is liable to be set aside by this Court.

2. Per contra, Mr. A.P. Srinivas, learned standing counsel appearing for the respondent urged this Court to dismiss the Writ Petition on two grounds. As far as the submission of the learned senior counsel appearing for the petitioner that without issuance of notice, the impugned order cannot be passed loading 19.70% more than the initial loading of 15%, the learned standing counsel appearing for the respondent would submit that there is no provision contemplated for issuance of notice and therefore, the petitioner cannot ask for issuance of notice as a matter of right. Adding further, he would submit that when the petitioner was provided with notice of hearing and after availing the advantage of personal hearing before the respondent, he has not made out his case, however, the respondent without satisfying with the argument advanced by the petitioner has rightly come to the conclusion and passed final order and in the event, if the petitioner is aggrieved, he can file an appeal. Fairly, he would further submit that the "Customs, Excise and Service Tax Appellate Tribunal" (CESTAT), Chennai, in Appeal No. C/S/40684/2014 and C/40484/2014, dated 13-8-2014, while remanding the matter to the adjudicating authority, directed the adjudicating authority to give proper opportunity of hearing before decision and such direction has been promptly complied with therefore, the impugned order is not liable to be interfered.

3. But this Court finds no merit in the contention made by Mr. A.P. Srinivas, learned standing counsel appearing for the respondent for the following reasons:-

The previous Order-in-Original No. 20999 of 2013, dated 3-6-2013 has given a direction stating as follows:-

"7. This decision is subject to a periodical review after a period of 3 years. To facilitate prompt and timely review, the importer is directed to come, forward with necessary data before 3 months from the date of the expiry period.

8. On expiry of 3 years period, if no renewal is done, the order will stand expired and the Assessing Groups shall resort to Provisional Assessment with EDD equivalent to 15.122% of the Assessable Value."

No doubt the said order was the subject matter of the appeal before the "Customs, Excise and Service Tax Appellate Tribunal" (CESTAT), Chennai. The learned Tribunal by order dated 13-8-2014 has remanded the matter back to the adjudicating authority to decide afresh after considering the evidences in accordance with law after setting aside the Order-in-Original and also made it clear that the adjudicating authority shall give proper opportunity of hearing before taking a decision. When the direction given by the learned Tribunal to the assessing authority is very clear, as pleaded by Mr. A.P. Srinivas, learned standing counsel, the petitioner was given all reasonable opportunity. But that

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does not mean that when the original authority in the earlier order has adjudicated the issue with regard to the provisional assessment with EDD equivalent to 15.122% of Assessable Value, cannot on their own by rejecting the value declared by the petitioner, order for re-determination of the value by loading the same by 19.70% without there being any specific further notice for enhancement of the value. Therefore, this Court being convinced with the submissions made by the learned senior counsel appearing for the petitioner is inclined to interfere with and accordingly by setting aside the impugned order, the matter is again remanded back to the assessing officer and the petitioner is directed to treat the order as notice and submit his case by appearing personally before the assessing authority. It is needless to mention that the assessing officer is directed to issue notice informing the date of hearing and thereafter to decide the matter on merits and in accordance with law. It is open to the petitioner to rely upon any documents at the time of hearing.

The Writ Petition is allowed in the above terms. No costs. Consequently, connected Miscellaneous Petition is closed.

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