(2017) 03 BOM CK 0041

In the Bombay High Court

Case No : Custom Appeal Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9 of 2012 and Misc. Civil Application Nos. 245, 246, 247, 248, 249, 250, 251, 252, 253 of 2017

Commissioner of Customs And Central Excise — APPELLANT

Vs

SESA Goa Limited — RESPONDENT

Date of Decision : 23-03-2017

Acts Referred:
Customs Act, 1962 — Section 131BA

Citation : (2017) 3 BCR 470

Hon'ble Judges : Anoop V. Mohta and Nutan D. Sardessai, JJ.

Bench : Division Bench

Advocate : Mr. C.A. Ferreira, Central Government Standing Counsel, for the Appellant; Mr. Sarvesh Kamat Malyekar, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Anoop V. Mohta, J. (Oral) - All appeals are already admitted on 26/09/2012. All the appeals are disposed off by this common judgment as issues are common and so also the position of law.

2. These applications are taken out by the appellant Commissioner of Customs and Central Excise for disposing off all the appeals in view of the instructions of the board so reflected in following paras:

"1. Being aggrieved by the Order passed by CESTAT, WZ, Mumbai the above Appeal had been filed under Section 130 of the Customs Act,1962.

2. The Appeal was admitted on Substantial Questions of Law and is currently awaiting Final Hearing.

3. Applicant states that in exercise of powers conferred by Section 35(R) of the Central Excise Act, 1944 made applicable to Service Tax vide Section 83 of the Finance Act,1994 and Section 131(B)A of the Customs Act, 1962 and in partial modification of earlier instructions issued bearing F.No.390/MISC/163/2010-JC

dated 17.08.2011, vide instruction F.No.390/MISC/163/2010-JC dated 17.12.2015, copy whereof is annexed hereto and marked as "Annexure A" the Central Board of Excise and Customs has fixed new moneraty limits and in respect of High Courts, the monetary limit has been fixed at Rs.15,00,000.00 (Rupees Fifteen Lakhs only).

4. Vide clarification F.No.390/MISC/163/2010-JC dated 01.01.2016, copy whereof is annexed hereto marked as "Annexure B", clarification has been issued that these instructions in Annexure A will apply to all pending Appeals in High Courts/CESTAT.

5. By instruction F.No.390/MISC/163/2010-JC/Pt dated 30th December,2016, copy whereof is annexed and marked as "Annexure C", the monetary limit for the appeal to the High Court has been revised to Rs.20,00,000/- (Rupees Twenty Lakhs only).

6. In view of the above, it has been found that in the present case, the revenue involved is below the monetary limit of Rs.20,00,000/- (Rupees Twenty Lakhs only) prescribed by the Board - the amount involved in the present Appeal is Rs.7,62,022/- (Rupees Seven Lakhs Sixty Two Thousand and Twenty Two only).

7. In view of the above the present Application is being filed for appropriate Orders for disposal of the above Appeal, in view of directions under Section 131(B) of the Customs Act, 1962.

Prayer

Applicant therefore prays that in view of the above, Your Lordships be pleased to pass Order disposing the above Appeal in view of the instructions of the Board as aforementioned."

3. It is relevant to quote section 131BA of The Customs Act, 1962("the Act", for short) specially sub-clause (1), (2) and (3).

"131BA. Appeal not to be filed in certain cases.

(1) The Board may, from time to time, issue orders or instructions or directions fixing such monetary limits, as it may deem fit, for the purposes of regulating the filing of appeal, application, revision or reference by the Commissioner of Customs under the provisions of this Chapter.

(2) Where, in pursuance of the orders or instructions or directions, issued under sub-section (1), the Commissioner of Customs has not filed an appeal, application, revision or reference against any decision or order passed under the provisions of this Act, it shall not preclude such Commissioner of Customs from filing any appeal, application, revision or reference in any other case involving the same or similar issues or questions of law.

(3) Notwithstanding the fact that no appeal, application, revision or reference has been filed by the Commissioner of Customs pursuant to the orders or

instructions or directions issued under sub-section (1), no person, being a party in appeal, application, revision or reference shall contend that the Commissioner of Customs has acquiesced in the decision on the disputed issue by not filing appeal, application, revision or reference.

(4) The Appellate Tribunal or court hearing an appeal, application, revision or reference shall have regard to the circumstances under which the appeal, application, revision or reference was not filed by the Commissioner of Customs in pursuance of orders or instructions or directions issued under sub-section (1).

(5) Every order or instruction or direction issued by the Board on or after the 20th day of October, 2010, but before the date on which the Finance Bill, 2011 receives the assent of the President, fixing monetary limits for filing appeal, application, revision or reference shall be deemed to have been issued under sub-section (1), and the provisions of sub-sections (2), (3) and (4) shall apply accordingly."

(emphasis added)

4. Apart from the above position of law the Ministry of Finance issued certain resolutions of excise and customs from time to time and has issued instructions/ circulars with clear intention to support the Government cases for reduction of litigation referring to the monitory limits from time to time, for filing appeals by the department before CESTAT/High Court and Supreme Court referring to power conferred by Section 35(R) of the Central Excise Act,1944 and section 131 BA of the Customs Act,1962 and related provisions of The Finance Act, 1994 .

5. The averments reproduced above covers the case of the appellants and the intention for the disposal of these appeals as per the provisions of law and policies declared by the concerned department.

6. There is no issue that the appeals filed by the department in the year 2012 having monitory limits of below 15/20 lakhs. The above provisions and instructions/circulars therefore covers the case of disposal of these appeals on the same ground. The learned Counsel appearing for the respondents has no objection for such disposal. We are, therefore, inclined to do so.

7. However, it is made clear that in view of the specific provision of Section 131BA(2) as reproduced and emphasized above it is necessary to observe that once the appeals are disposed off in view of the above circumstances, based upon such circulars/instructions "it shall not preclude such Commissioner of customs from filing any appeal, application, revision or reference in any other case involving the same or similar issues or questions of law."

8. By above observations all these appeals are disposed off as prayed. Applications are allowed accordingly. No cost.