(2014) 02 MAD CK 0140

In the Madras High Court

Case No : Civil Miscellaneous Appeal (MD) No. 104 of 2010 and M.P. (MD) No. 1 of 2010

Commissioner of Customs APPELLANT

Vs

Madura Coats Pvt. Ltd. RESPONDENT

Date of Decision : 11-02-2014

Acts Referred:

Customs Act, 1962 — Section 129B(2), 129B(2), 149, 17(4), 27
Customs Tariff Act, 1975 — Section 3

Citation : (2014) 307 ELT 87

Hon'ble Judges : G. Chockalingam, J;A. Selvam, J

Bench : Division Bench

Judgement

A. Selvam, J.—This Civil Miscellaneous Appeal has been directed against the Final Order No. 700 of 2009, dated 2-6-2009 [2009 (248) E.L.T. 431 (Tribunal)] by the CESTAT, Chennai. The respondent herein has imported five pieces of ''computer controlled HTHP yarn dyeing machines along with dye kitchen tank and accessories'' of Chapter Sub Heading 84514029 and cleared them under Bill of Entry No. 901018, dated 14-10-1995. The goods imported have been cleared against EPCG licence issued in terms of Notification No. 97/2004-Customs, dated 17-9-2004. The said notification has exempted goods imported from basic customs duty (BCD) in excess of 5% ad valorem as well as from the entire additional duty of customs (CVD) leviable under Section 3 of the Customs Tariff Act, 1975. The BCD payable has been assessed at Rs. 8,08,205/-. An amount of Rs. 27,41,265.76 has been debited in EPCG licence as duty savings. Later on, MCPL realised that computer controlled HTHP yarn dyeing machine with due kitchen tank and accessories are covered by Sl. No. 193 of table to the notification (Item No. 7 in the list 6 of the Notification No. 6/2002-C.E., dated 1-3-2002) that the CVD leviable on the goods imported was ''Nil'' and that the duty savings to be debited in EPCG licence under the Bill of Entry No. 901098 should have been nil. The respondent has approached the Assistant Commissioner of Customs to pass appropriate order declaring duty savings pursuant to the subject import as nil. The Assistant Commissioner declined the request of the respondent on the ground that the respondent has not claimed benefit of Notification No. 6/2002-C.E. when the respondent has filed Bill of Entry No. 901018, dated 14-10-2005. Against the order passed by the Assistant Commissioner and subsequent proceedings, an Appeal has been filed before the CESTAT and the CESTAT has passed a Final Order No. 100 of 2007 [2007 (212) E.L.T. 332 (Tri.-Chennai)] and ultimately set aside the proceedings of the lower authorities and directed the Assessing Authority to consider the appellant''s claim in terms of the order and take a decision after giving reasonable opportunity to the appellant and subsequently a requisition has been given on 30-6-2009. On the basis of the said requisition, the claim of the respondent has been accepted and the same has been challenged before various Authorities and finally, the CESTAT has rejected the claim of the Department by way of passing the Final Order No. 700 of 2009. Against the said order, the present Civil Miscellaneous Appeal has been directed.

2. At the time of admitting the present Civil Miscellaneous Appeal, the following substantial questions of law have been settled for consideration:

(i) When re-assessment cannot be done directly under Section 17(4) of the Act, whether it can be done indirectly by invoking Section 149 of the Act?

(ii) Whether the Tribunal can exercise the discretion of the proper officer under section 149 of the Customs Act, 1962, especially when the proper officer has had no opportunity to exercise the same?

3. The learned counsel appearing for the appellant has advanced his elaborate argument in support of the contention put forth on the side of the Department. The ultimate argument put forth on the side of the appellant is that the conclusion arrived at by the Appellate Authority in Final Order No. 700 of 2009 is erroneous.

4. In order to answer the contention put forth on the side of the appellant, the learned counsel appearing for the respondent has contended that every order passed by the Appellate Tribunal is liable to be challenged either by way of amendment or by way of preferring an Appeal. Under the said circumstances, the Final Order passed in Final Order No. 100 of 2007 has not been challenged and only on the basis of demand order passed by the Appellate Authority, the Final order in question has been passed and therefore, the present Civil Miscellaneous Appeal is not legally maintainable.

5. In support of his contention, he has drawn the attention of the court to the provision of Section 129B(2) of the Customs Act, 1962, wherein it is stated like thus:

"The Appellate Tribunal may, at any time within [six months] from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section (1) and shall make such amendments if the mistake is brought to its notice by the (Commissioner of Customs) or the other party to the appeal."

6. As rightly pointed out by the learned counsel appearing for the respondent, the Authorities have passed the orders in question on the basis of remand order made in Final Order No. 100 of 2007. It is the bounden duty of the Department to challenge the same either by way of seeking amendment or by way of preferring an Appeal. But the Department has not done it. Under the said circumstances, the Department is totally precluded from challenging the present Final Order.

7. Apart from Section 129-B(2) of the said Act, the learned counsel appearing for the respondent has drawn the attention of the Court to Chapter-15 of CBEC Customs Manual of Instructions, wherein it is stated like thus:

"On import or export of goods, at times, it is found that duty has been paid in excess of what was actually leviable on the goods. Such excess payment may be due to lack of information on the part of importer/exporter or non-submission of documents required for claim of lower value or rate of duty. Sometimes, such excess payment of duty may be due to shortage/short landing, pilferage of goods or even incorrect assessment of duty by Customs. In such cases, refund of excess amount of duty paid can be claimed by the importer or exporter. If any excess interest has been paid by the Importer/exporter on the amount of duty paid in excess, its refund can also be claimed. Section 27 of the Customs Act, 1962 refers in this regard. The refund of any duty and interest can be claimed either by a person who has paid the duty in pursuance to an order of assessment or a person who has borne the duty. Any person claiming refund of any duty or interest has to make an application in duplicate in the Form as prescribed in the Customs Refund Application (Form) Regulations, 1995, to the jurisdictional Deputy/Assistant Commissioner of Customs. Such application is to be made before the expiry of six months from the date of payment of duty and interest. However, in case of any import made by any individual for his personal use or by Government or by any educational, research or charitable institution or hospital, application for refund can be made before the expiry of one year from the date of payment of duty and interest."

8. Therefore, from cumulative reading of the Section referred to earlier as well as Chapter 15 of the Customs Manual, it is needless to say that the contention put forth on the side of the appellant is not factually and legally sustainable and altogether, the present Civil Miscellaneous Appeal deserves to be dismissed and the substantial questions of law settled in the present Civil Miscellaneous Appeal are not having substance. In fine, this Civil Miscellaneous Appeal deserves dismissal and accordingly is dismissed without cost. The Final Order No. 700 of 2009, dated 2-6-2009 by the CESTAT, Chennai is confirmed. Connected Miscellaneous petition is also dismissed.

