(2015) 06 MAD CK 0567

In the Madras High Court

Case No : C.M.A. No. 3710 of 2011

Commissioner of Customs (Imports) APPELLANT

Vs

NGA Steels (P.) Ltd. RESPONDENT

Date of Decision : 05-06-2015

Acts Referred:

Citation : (2015) 51 GST 748

Hon'ble Judges : R. Sudhakar, J;K.B.K. Vasuki, J

Bench : Division Bench

Advocate : S. Thirumavalavan, for the Appellant; K. Jayachandran, Advocates for the Respondent

Judgement

R. Sudhakar, J—Aggrieved by the order passed by the Tribunal in allowing the appeal filed by the assessee, the Revenue/appellant is before this Court by filing the present appeal. This Court, vide order dated 2.3.2012, while admitting the appeal, framed the following substantial question of law for consideration:--

"Whether the Hon''ble Tribunal''s order setting aside the confiscation and penalty ordered by the Adjudicating Authority is in order in terms of Public Notice No. 152/2004, dated 19.10.2004 when there is clear violation of the procedure contemplated as per Annexure I to Appendix 8 and Appendix 28 of Handbook under the EXIM Policy by the importer?"

The first respondent/assessee imported a consignment of re-rollable scrap through the Chennai Customs. According to the public notice issued by the Commissioner of Customs, Chennai, the importer has to file pre-shipment certificate along with the Bill of Entry while praying for assessment and clearance. In terms of Board Circular No. 56/2004-Cus., dated 18.10.2004, in the absence of pre-shipment certificate, the imported goods have to be examined in full. Since the importer did not file pre-shipment certificate, the adjudicating authority imposed a redemption fine of Rs. 1,25,000 and penalty of Rs. 1,00,000. Aggrieved by the said order of the adjudicating authority, the assessee preferred appeal before the Commissioner (Appeals), who, by order dated 13.5.05 reduced the redemption fine from Rs. 1,25,000 to Rs. 75,000 and reduced the penalty from Rs. 1,00,000 to Rs. 50,000.

2. Against the said order, the first respondent/assessee preferred appeal to the Tribunal. The Tribunal, following the order of the Gujarat High Court in The Commissioner of Customs Vs. Senor Metals Pvt. Ltd., (2009) 236 ELT 445 , set aside the redemption fine and penalty and allowed the appeal filed by the assessee, against which the appellant/Department has preferred the present appeal.

3. Learned counsel appearing for the first respondent/assessee raised a preliminary objection as to the maintainability of the case of the appellant contending that the appellant ought not to have been filed the appeal in view of Board Circular DO F. No. 390/170/92-JC, dated 13.1.1993, wherein for preferring an appeal, monetary limit is fixed and only if the monetary limit exceeds Rs. 2 Lakh, appeal can be filed. Since the monetary limit in the present case, even as per the order of the Commissioner (Appeals) is well within the limit of Rs. 2 Lakh, the present appeal, filed by the Department, is not maintainable.

4. Heard the learned standing counsel appearing for the appellant/Department and the learned counsel appearing for the first respondent/assessee and perused the materials available on record.

5. Even though these appeals were admitted on the above question of law, referred to supra, we are not inclined to entertain this appeal in view of the preliminary objection made by the learned counsel for the respondent that the monetary limit to prefer an appeal is pegged at Rs. 2,00,000 by the Board Circular DO F. No. 390/170/92-JC, dated 13.1.1993. It is seen from the record that the Assessing Officer initially imposed Rs. 1,25,000 as redemption fine and Rs. 1,00,000 as penalty, which, on appeal, was subsequently reduced by the Commissioner (Appeals) to Rs. 75,000 and Rs. 50,000 respectively and on further appeal by the assessee, the Tribunal set aside the order of the Commissioner (Appeals). Therefore, it is very clear from the records that the monetary limit having been fixed at Rs. 2 Lakh, even as per the order of the Commissioner (Appeals), the redemption fine and penalty being less than Rs. 2 Lakh, the appeal is not maintainable.

5.1 The abovesaid circular issued by the Board is squarely applicable to the facts of the present case and, therefore, this Court is not inclined to entertain this appeal. Accordingly, without going into the merits of the question of law formulated and in the light of the Board''s circular mentioned supra, this appeal is dismissed as not maintainable. However, there shall be no order as to costs.

