(2016) 12 MAD CK 0006

In the Madras High Court

Case No : Writ Petition Nos. 32059-32062 of 2016 and W.M.P. Nos. 27804-27807 of 2016

Haja Mohideen Abdul Jaleel — APPELLANT

Vs

Union of India — RESPONDENT

Date of Decision : 01-12-2016

Acts Referred:

Citation : (2017) 346 ELT 321

Hon'ble Judges : T.S. Sivagnanam, J.

Bench : Single Bench

Advocate : Shri A. Ganesh, Counsel, for the Petitioner; Ms. Hemalatha, SPC, for the Respondent

Final Decision : Disposed Off

Judgement

T.S. Sivagnanam, J.—Heard Mr. A. Ganesh, learned counsel appearing for the petitioners and Ms. R. Hemalatha, learned Senior Panel Counsel appearing for the respondents. With the consent of either side, the writ petitions are taken up for disposal.

2. A revision was filed before the Central Government by the revenue challenging the order passed by the Commissioner of Customs (Appeals). The Commissioner of Customs (Appeals) had passed an order setting aside the order of the original authority ordering absolute confiscation of the goods, however, did not interfere with the penalty which was imposed. The Revisional Authority, namely, the first respondent has considered the matter and passed a detailed order and set aside the order of Commissioner of Customs (Appeals) and confirmed the order of the original authority. Challenging the same, the petitioner is before this Court.

3. The learned counsel for the petitioners would contend that the revisional authority has no jurisdiction in the light of the decision in the case of NVR Forgings v. Union of India reported in 2016 (335) E.L.T. 679 (P&H), wherein it was held that the Joint Secretary of the Central Government has no jurisdiction

to decide the revision. The operative portion of the order reads as follows :

"8. In the present case, the impugned order was passed by the Joint Secretary to Government of India who was also Commissioner of Central Excise and Customs. Thus, the order-in-appeal as well as revisionary order had been passed by the officers of the same rank which is not permissible as per law. Adverting to the judgments relied upon by the learned counsel for the respondents, it may be noticed that the said decisions were based on individual fact situation involved therein. Thus, the respondents cannot derive any advantage from the said pronouncements."

4. It is not in dispute that the above decision has been confirmed by the Hon''ble Supreme Court and the SLP was dismissed and the review petition as against the said order was dismissed. Now the Department is working out remedial measures.

5. In the light of the settled legal position, this Court has to necessarily hold that the impugned order has been passed by the incompetent authority and therefore requires to be interfered with. However, this Court has not gone into the merits of the matter. Nevertheless, this Court can examine as to whether the Commissioner (Appeals) has considered the matter in a proper perspective. On a reading of the order passed by the Commissioner (Appeals) it is evidently clear that the Commissioner (Appeals) has not taken into consideration the definition of Section 2(33) of the Customs Act, 1961 which defines the prohibited goods as follows :

"2(33). "prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with."

6. Apart from that, the learned Senior Panel Counsel appearing for the respondents would submit that the decision in the case of Malabar Gold Jewellery is very relevant to the facts and circumstances of the case. In fact, on the merits of the case the revisional authority has referred to several decisions of the Hon''ble Supreme Court to come to a conclusion that the goods carried by the petitioner were prohibited goods. However, while examining the appeal petition, the Commissioner of Customs (Appeals) has not made a thorough exercise in this regard. In fact there has not been proper examination as to whether the goods which were brought by the petitioner are prohibited goods. Therefore, this Court is of the view that even if the impugned order is set aside, the matter has to be remanded to the second respondent for fresh consideration.

7. Accordingly, while allowing the writ petition and setting aside the impugned order in the light of the decision of the High Court of Punjab and Haryana in the case of NVR Forgings as confirmed by the Hon''ble Supreme Court, this Court is inclined to interfere with the orders passed by the Commissioner of Customs

(Appeals) and the matter is remanded to the second respondent for fresh consideration. The second respondent shall consider the contentions raised by the petitioner as well as the revenue and examine all legal aspects more particularly, whether the goods in question are prohibited goods and whether they would fall under the definition of Section 2(33) of the Customs Act, 1961. The above direction shall be complied with by the second respondent within a period of eight weeks from the date of receipt of a copy of this order. It is made clear that this Court has not examined the merits of the contentions but has allowed the writ petition only on the aforesaid technical ground. No costs. Consequently, connected miscellaneous petitions are also closed.

