(2015) 01 MAD CK 0124

In the Madras High Court

Case No : Civil Miscellaneous Appeal Nos. 3301 and 3492 of 2014 and M.P. Nos. 1 and 1 of 2014

Suguna Foods Limited APPELLANT

Vs

The Commissioner of Customs RESPONDENT

Date of Decision : 05-01-2015

Acts Referred:
Customs Act, 1962 — Section 111(m), 111(o), 112(a)

Citation : (2015) 01 MAD CK 0124

Hon'ble Judges : R. Karuppiah, J.;R. Sudhakar, J.

Bench : Division Bench

Advocate : R. Kannan, for the Appellant; A.P. Srinivas, SC, Advocates for the Respondent

Judgement

R. Sudhakar, J.—The above Civil Miscellaneous Appeals have been filed by the assessee as against the Miscellaneous Order No. 41282 of 2014 dated 5.8.2014 and Final order No. 40844 of 2014 dated 19.11.2014 on the file of the Customs, Excise and Service Tax Appellate Tribunal, Chennai.

2. The brief facts are as follows:

The appellant/assessee imported Poultry Feed Premix for Broiler Finisher and cleared under 25 Bills of Entry by availing the benefit of exemption under Notification No. 26/2000-Cus. dated 1.3.2000 subject to fulfillment of the conditions specified in the Customs Tariff (Determination of Origin of Goods under the Free Trade Agreement between the Democratic Socialistic Republic of Sri Lanka and Republic of India), Rules, 2000 under Notification No. 19/2000-Cus. (NT) dated 6.3.2000 (in short, Rules 2000). The officers of the Directorate of Revenue Intelligence (DRI) during investigation found that the certificate of origin as produced by the appellant is in contravention of the conditions of the said Rules, 2000. Consequently, a show-cause notice dated 8.6.2011 was issued proposing to deny the benefit of exemption Notification 26/2000-Cus. and to demand duty of Rs.2,26,50,335/- along with interest and to impose penalty against 25 Bills of Entry. It was also proposed to confiscate the goods under Section 111(m) and 111(o) of the Customs Act, 1962. The Commissioner of customs, after taking into consideration the reply filed in response to the show cause notice, vide order in original, denied the benefit of exemption under Notification No. 26/2000-Cus. dated 1.3.2000 and confirmed the demand of duty of Rs.2,26,50,335/- along with interest and imposed penalty of Rs.one crore under Section 112(a) of the Customs Act, 1962. 3. Aggrieved by the order of the Adjudicating Authority, the assessee preferred an appeal before the Tribunal along with an application for waiver of pre-deposit.

4. Before the Tribunal, the assessee pleaded that the certificate issued by the competent authority of the exporting country was valid except to the extent that some of it has been cancelled and the Revenue has no authority to deny the benefit of exemption in its entirety. It was also pleaded that the exporting country by letter dated 28.3.2000 had clarified that except two certificates, which were cancelled by them, all other certificates issued were proper and legal. It was also the plea of the appellant before the Tribunal that the certificates issued were genuine and the proper officer permitted clearance of the goods after verification. Therefore, the demand of duty was not justifiable by denying the grant of exemption.

5. The view of the Department was that the Rules provided certain procedure before the benefit is claimed and the Commissioner has given a clear finding that the goods imported by the appellant/assessee did not satisfy the requirement of the said Rules, inasmuch as some of the goods were sourced from places other than Sri Lanka, thereby, the benefit of the said Rules would not enure to the appellant/assessee. The Revenue also placed reliance on certain letters, particularly letter dated 28.3.2008 and the reasoning of the Commissioner to hold that the appellant had not complied with the procedure prescribed in the Rules.

6. The Tribunal taking note of the serious dispute of fact in relation to the application of Rules, in respect of which the appellant seeks benefit, held that the said fact has to be decided in the main appeal. The Tribunal further held that the DRI officers had also found several materials which would reveal the doubt in respect of the authenticity of the certificate of country of origin. In such view of the matter, the Tribunal was benevolent in ordering pre-deposit of Rs.60,00,000/- as against the demand of Rs.2,26,50,335/-, which comes approximately 25% of the demand.

7. Aggrieved by the order of the Tribunal, the appellant has filed an appeal in C.M.A. No.3301 of 2014.

8. In the meantime, since the appellant has not complied with the order of pre-deposit, the Tribunal dismissed the main appeal by order dated 19.11.2014. Aggrieved by the said order, the appellant preferred further appeal in C.M.A. No.3242 of 2014.

9. Heard learned counsel appearing for the appellant and learned Standing Counsel appearing for the Revenue and perused the materials placed before this Court.

10. On facts, as presented by the Tribunal, we find no good reason to modify the order of the Tribunal ordering pre-deposit, as the factual aspect has to be gone into by the Tribunal on merits and the same cannot be agitated before this Court for the purpose of modification of the order of the Tribunal. However, taking note of the plea of Mr.R.Kannan, learned counsel appearing for the appellant, we are inclined to extend the time to make the pre-deposit as ordered by the Tribunal.

11. In the light of the above, we pass the following order:

(i) The order of the Tribunal dated 05.08.2014 is modified to the effect that the appellant shall make a pre-deposit as ordered by the Tribunal in two equal instalments, first of which shall be deposited on or before 30th January, 2015 and the second instalment shall be deposited on or before 27th February, 2015;

(ii)the order of the Tribunal dated 19.11.2014 dismissing the appeal for non-compliance of the stay order is set aside and the appeal is restored to the file of the Tribunal subject to the appellant deposits the first instalment within the stipulated period and gives an undertaking to deposit the balance amount within the stipulated period;

(iii)if there is any failure to comply with any one of the conditions stated above, the Tribunal is at liberty to proceed further.

In the result, these appeals are ordered in the above terms. No costs. Consequently, connected Miscellaneous Petitions are closed.