(2015) 06 MAD CK 0513

In the Madras High Court

Case No : C.M.A. No. 3110 of 2010

The Commissioner of Customs (Air) APPELLANT

Vs

BSES Kerala Power Ltd. and Others RESPONDENT

Date of Decision : 11-06-2015

Acts Referred:
Customs Act, 1962 — Section 129-D, 130, 130(1), 14

Citation : (2015) 52 GST 525

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

Bench : Division Bench

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

Judgement

R. Sudhakar, J—Aggrieved by the order of the Appellate Tribunal in allowing the appeal filed by the assessee, the Revenue is before this Court challenging the said order by filing the present appeal. Vide order dated 3.12.2010, while admitting the appeal, this Court framed the following substantial questions of law for consideration:--

"1) Whether the cost of the material surrendered to the foreign company while refurbishing the exported product for repair, should be included in the value for the purpose of levy of duty as under Customs Notification No. 94/96 or not?

2) Whether the Hon''ble CESTAT is correct in its interpretation that the said notification prescribed a self-contained procedure for determination of the amount on which duty due on re-import of repaired goods was to be paid and therefore taking recourse to Section 14 and provisions of Customs Valuation Rules (CVR) were uncalled for and unjustified?

3) Whether the Hon''ble CESTAT has not erred in coming to a conclusion that the exercise undertaken by the Commissioner to determine the transaction value of HPP under Custom Valuation Rules (CVR) is not in terms of the legal provisions or legal requirement for assessment of the impugned imports?

4) Whether Hon''ble CESTAT is correct in allowing the appeal not canvassed by the 1st respondent, but that drawn out on its own volition that too by not giving an opportunity to the appellant herein to meet and counter such points?"

2. The short facts of the case are that on the basis of the show cause notice issued, the Commissioner held that the assessee is liable to pay differential duty and also liable for payment of interest and penalty under the respective provisions of the Act. The assessee, aggrieved by the said order, preferred appeal before the Tribunal. The Tribunal allowed the appeal filed by the 1st respondent/assessee with regard to demand of differential duty as also the other consequential levies. Aggrieved against the said order, the Revenue is before this Court by filing the present appeal.

3. Heard the learned standing counsel appearing for the appellant and the learned counsel appearing for the 1st respondent/assessee.

4. At the outset, the learned counsel for the 1st respondent objected to the maintainability of the appeal before this Court on the above questions of law raised by the department. It is the plea of the learned counsel for the 1st respondent that Section 130 of the Customs Act, provides that an appeal on the issue relating to rate of duty of excise or value of goods for purposes of assessment would not lie before this Court. He placed strong reliance on the decision of the Supreme Court in Navin Chemicals Mfg. and Trading Co. Ltd. Vs. Collector of Customs, (1993) 49 ECR 1 : (1993) 68 ELT 3 : (1993) 5 JT 362 : (1993) 3 SCALE 776 : (1993) 4 SCC 320 : (1993) 2 SCR 326 Supp , wherein it is held as under:

"11. It will be seen that sub-section (5) uses the said expression determination of any question having a relation to the rate of duty or to the value of goods for the purposes of assessment and the Explanation thereto provides a definition of it for the purposes of this sub-section. The Explanation says that the expression includes the determination of a question relating to the rate of duty; to the valuation of goods for purposes of assessment; to the classification of goods under the Tariff and whether or not they are covered by an exemption notification; and whether the value of goods for purposes of assessment should be enhanced or reduced having regard to certain matters that the said Act provides for. Although this Explanation expressly confines the definition of the said expression to sub-section (5) of Section 129-D, it is proper that the said expression used in the other parts of the said Act should be interpreted similarly. The statutory definition accords with the meaning we have given to the said expression above. Questions relating to the rate of duty and to the value of goods for purposes of assessment are questions that squarely fall within the meaning of the said expression. A dispute as to the classification of goods and as to whether or not they are covered by an exemption notification relates directly and proximately to the rate of duty applicable thereto for purposes of assessment. Whether the value of goods for purposes of assessment is required to be increased or decreased is a question that relates directly and proximately to the value of goods for purposes of assessment. The statutory definition of the said expression indicates that it has to be read to limit its application to cases where, for the purposes of assessment, questions arise directly and proximately as to the rate of duty or the value of the goods.

12. This, then, is the test for the purposes of determining whether or not an appeal should be heard by a Special Bench of CEGAT, whether or not a reference by CEGAT lies to the High Court and whether or not an appeal lies directly to the Supreme Court from a decision of CEGAT: does the question that requires determination have a direct and proximate relation, for the purposes of assessment, to the rate of duty applicable to the goods or to the value of the goods."

(emphasis supplied)

5. Section 130 of the Act deals with appeal to the High Court against the order of the Tribunal. Section 130(1) explicitly exempts appeal in respect of determination of any question in relation to rate of duty. For better clarity, the relevant provision of the Act is extracted hereunder:--

"SECTION 130. Appeal to High Court. - (1) An appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal on or after the 1st day of July, 2003 (not being an order relating, among other things, to the determination of any question having a relation to the rate of duty of customs or to the value of goods for the purposes of assessment), if the High Court is satisfied that the case involves a substantial question of law."

(emphasis supplied)

6. As evident from the objection as made by the assessee, the issue pertains to rate of duty that is payable by the respondent. In view of the above provision, which exempts appeal to be entertained by the High Court in relation to rate of duty, the objection as raised by the respondent is liable to be sustained in view of the decision of the Supreme Court in Navin Chemicals case (supra), which decision has been followed by this Court in The Commissioner of Central Excise Vs. Vadapalani Press .

7. In the above circumstances, while this Court is not inclined to deal with the matter, while disposing off the present appeal as not maintainable, is inclined to grant liberty to the appellant/department to pursue the matter before the Supreme Court, if so advised.

8. Accordingly, this appeal is disposed of with liberty to the appellant/department to move before the Supreme Court, if so advised. However, there shall be no order as to costs.