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IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (CUSTOMS)
ORIGINAL SIDE

IA No.GA/2/2021
CUSTA/14/2021

COMMISSIONER OF CUSTOMS,
(AIRPORT AND ADMINISTRATION), KOLKATA
-Versus-
M/S. CRI LIMITED

Appearance:

Mr. Somnath Ganguli, Adv.
Mr. Sukalpa Seal, Adv.
Ms. Priyamvada Singh, Adv.
...for the appellant.

Mr. Sujit Ghosh, Adv.,
Mr. Rahul Dhanuka, Adv.,
Mr. Joybrata Misra, Adv.,
Mr. Hersh Choudhury, Adv.,
Mr. Subh Dixit, Adv., for the respondent.

BEFORE:

The Hon'ble JUSTICE T.S. SIVAGNAM

-And-

The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 7th March, 2022.

The Court : This appeal filed by the appellant under Section 130 of the Customs Act, 2016 (the 'Act' in brevity) is against the order dated 18th November, 2020 in Final Order No.75617 of 2020 passed by the Customs, Excise and Service Tax Appellate Tribunal, East Regional Bench, Kolkata.

The appellant has raised the following substantial questions of law for consideration :

(a) Whether the exemption Notification vide No.45/2005 Cus(Tariff) dated 16th May, 2005 has specifically exempted the goods cleared from SEZ to DTA by way of stock transfer when there is no evidence to the effect that the assessee paid respective State Sales Tax/VAT on the said goods even at any subsequent stage of transfer of the said goods?

(b) Whether the Learned Tribunal has rightly interpreted that the Circular No.44/2013-Customs dated 30th December, 2013 has curtailed the scope of an exemption Notification vide No.45/2005-Cus(Tariff) dated 16th May, 2005 when the said Circular is explanatory in nature and has given nothing but a mere clarification of the exemption Notification vide No.45/2005-Cus(Tariff) dated 16th May, 2005 and no new condition and/or restriction has been brought into effect to curtail the scope of the said original exemption Notification vide No.45/2005-Cus(Tariff) dated 16th May, 2005 ?

(c) Whether the Learned Tribunal erred to have arrived to such perverse findings that the extended period of limitation cannot be invoked since the Bill of Entries were countersigned by the customs official prior to clearance of goods and thus there was no question of suppression of facts and/or any mis-statement of the assessee/Respondent herein, without appreciating the fact that the customs official are required to act on the basis of the Bill of Entry filed by the assessee and in the instant case, at the time of clearance of goods from SEZ, there is no scope for verifying the future action of the assessee that when the

goods will be sold from DTA unit of the assessee respective State Sales Tax/VAT will be paid?

Mr. Sujit Ghosh, learned Counsel appearing for the respondent/assessee raised a preliminary objection contending that this appeal is not maintainable before this Court under Section 130 of the Act as the matter concerns a decision on the rate of duty as the question involved is with regard to the applicability of notification no.45/2005–Customs dated 16th May, 2005.

We have heard learned standing Counsel on behalf of the appellant. The adjudicating authority, namely, the Principal Commissioner of Customs (Airport and Administration), Kolkata was of the view that the respondent/assessee is not entitled to benefit of notification no.45/2005–Customs dated 16th May, 2005 in the light of the circular issued by the Board being Circular no.44/2013–Customs.

Accordingly, the adjudicating authority confirmed the proposal in the show cause notice and denied the benefit of the notification. On appeal before the Tribunal, the decision rendered by the authority for Advance Rulings, New Delhi in *Ge India Industrial Pvt. Ltd.*, 2014 (304) E.L.T. 452(A.A.R.) and the decision of Mumbai Tribunal in the case of *Commissioner of C. Ex. Pune-III* reported in 2019(370) E.L.T. 407 and relief was granted to the assessee.

First, we take up for consideration the preliminary objection raised by Mr. Ghosh with regard to the maintainability of the appeal before this Court. The facts are not in dispute, namely, that the benefit of the notification no.45 of 2005 has been denied. In such circumstances, will it be a bar for this Court to entertain this appeal under Section 130 of the Act?

In this regard, we have considered the decision of the Hon'ble Supreme Court in the Commissioner of Customs, Bangalore-1 -vs- Motorola India Limited reported in (2019) 9 SCC 563. It was pointed out that when the question involved is whether an assessee is covered by an exemption notification or not is a question relatable to the rate of duty. If that be the legal position, then this Court cannot entertain this appeal. Thus, the preliminary objection raised by Mr. Ghosh is sustained and appeal is held to be not maintainable before this Court.

In the result, the appeal is dismissed as not maintainable.

The Registry is directed to return the original certified copy of the order passed by the Tribunal to the learned advocate for the appellant after retaining a photostat copy.

Consequently, the substantial questions of law which have been suggested by the revenue are not taken up for consideration and left open.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)