CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO.III

Customs Miscellaneous Application No. 40171 of 2019
(on behalf of Appellant)
In
CustomsAppeal No. 41598 of 2014

(Arising out of Order-in-Appeal C.Cus. No. 599 to 614/2014 dated 04.04.2014 passed by the Commissioner of Customs (Appeals), No. 60, Rajaji Salai, Custom House, Chennai – 600 001)

M/s. Sybex Corporation, **: Appellant**
Archana Complex,
37/12-1, 4th Cross,
Lalbagh Road,
Bangalore – 560 027

VERSUS

The Commissioner of Customs, **: Respondent**
(Seaport - Imports),
Custom House,
No. 60, RajajiSalai,
Chennai – 600 001

WITH

Customs Miscellaneous Application No. 40172 of 2019
(on behalf of Appellant)
In
CustomsAppeal No. 41599 of 2014

(Arising out of Order-in-Appeal C.Cus. No. 599 to 614/2014 dated 04.04.2014 passed by the Commissioner of Customs (Appeals), No. 60, RajajiSalai, Custom House, Chennai – 600 001)

M/s. Taha Trading Corporation, **: Appellant**
119, Siyaganj,
Indore – 452 007,
Madhya Pradesh

VERSUS

The Commissioner of Customs, **: Respondent**
(Seaport - Imports),
Custom House,
No. 60, RajajiSalai,
Chennai – 600 001

AND

Customs Miscellaneous Application No. 40169 of 2019
(on behalf of Appellant)
In
CustomsAppeal No. 41600 of 2014

(Arising out of Order-in-Appeal C.Cus. No. 599 to 614/2014 dated 04.04.2014 passed by the Commissioner of Customs (Appeals), No. 60, RajajiSalai, Custom House, Chennai – 600 001)

M/s. Samarth Corporation, **: Appellant**
Archana Complex,
37/12-1, 4th Cross,
Lalbagh Road,
Bangalore – 560 027

VERSUS

The Commissioner of Customs, **: Respondent**
(Seaport - Imports),
Custom House,
No. 60, RajajiSalai,
Chennai – 600 001

APPEARANCE:

Shri. B.N. Gururaj,Advocatefor the Appellant

Shri. M. JaganBabu,Authorized Representative for the Respondent

CORAM:

HON'BLE MR. P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)
HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

FINAL ORDER NOS. 41040-41042 / 2019

DATE OF HEARING: 30.07.2019

DATE OF DECISION: 30.07.2019

PER: P. DINESHA

The Miscellaneous Applications for early hearing of the appeals are allowed. With the consent of both sides, considering the fact that a common issue is involved and that the same is covered in the assessee's own case, all these appeals are taken up together for common disposal.

2. Today, when the matter was taken up for hearing, Shri. B.N. Gururaj, Ld. Advocate, appeared for all the appellants and Shri. M. JaganBabu, Ld. AR, appeared for the Revenue/respondent.

3.1 Ld. Advocate for the appellants contended at the outset that the impugned orders will have to be set aside as the issue has been settled in favour of the taxpayer by the Hon'ble High Court of Judicature at Madras, which Order has in fact been followed by this Bench in the case of similarly placed assessees and the demands therein have been set aside, vide ***Final Order Nos. 40481-40486/2019 dated 11.03.2019.***

3.2 Ld. Advocate also *inter alia* contended that the issue pertains to the demand of Customs Duty in respect of Duty Free Import Authorization ('DFIA' for short)scrips used by them for clearance of imported plastic granules based on the amendment to Notification No. 40/2006-Cus. dated 01.05.2006 vide Notification No. 17/2009-Cus. dated 19.02.2009 giving retrospective effect vide Section 92 (1) of the Finance Act, 2009; that a Show Cause Notice was issued, which was seriously contested by the appellants both on limitation as well as merits; that the Adjudicating Authority confirmed the demands proposed in the Show Cause Notice, which were also upheld by the First Appellate Authority; that considering the gravity of the issue, the appellants had approached the Hon'ble High Court of Judicature at Madras by filing Writ Petition and the Hon'ble High Court vide judgement dated 01.11.2017 struck down the retrospective validation amendment as unconstitutional and as a result, Notification No. 17/2009 *(supra)* could only operate prospectively; that the above judgement was followed by this Bench in respect of similarly placed appellants and vide Final Order Nos. 40481-40486/2019 dated 11.03.2019, the appeals have been allowed with consequential benefits, the issue being identical and the period of dispute also being prior to 19.02.2009, the above judgement would squarely apply to these cases.

4. *Per contra*, Ld. AR appearing for the Revenue supported the findings of the lower authorities.

5. We have considered the rival contentions, gone through the documents placed on record and also the order of this Bench relied on by the Ld. Advocate for the appellants.

6. On going through the Show Cause Notice, we find that the Bills-of-Entry in respect of the appellants are clearly before the cut-off date, i.e.,

19.02.2019, which is also not disputed by the Ld. Departmental Representative and hence, the dictum of the Hon'ble jurisdictional High Court squarely applies.

7. On the other hand, nothing is brought forth by the Revenue as regards the stay of operation of the above judgement of the Hon'ble jurisdictional High Court by the Hon'ble Apex Court and therefore, the impugned orders in respect of the above appeals are set aside by following the above judgement and in line with the order of this Bench *(supra).*

8. Consequently, Customs Appeal Nos. 41598, 41599 and 41600 of 2014 are allowed with consequential benefits, if any, as per law.

(Operative part of the order was pronounced in open court)

(P. VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(P. DINESHA)
MEMBER (JUDICICAL)

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