IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

REGIONAL BENCH - COURT NO. – III

Customs Appeal No. 41932 of 2013

(Arising out of Order-in-Appeal C.Cus. No.1106/2013 dt. 12.8.2013 passed by the Commissioner of Customs (Appeals), Chennai)

C. Magudapathy **Appellant**
No.28, 1st Floor,
Justice Ramakrishna Street
Karneeswarar Koil Street
1st Street, Mylapore
Chennai 600 004.

Vs.

Commissioner of Customs (Seaport-Export) **Respondent**
Custom House,
No.60, Rajaji Salai,
Chennai 600 001.

APPEARANCE:

Dr. S. Krishnanandh, Advocate for the Appellant
Shri R. Raja Raman, AC (AR) for the Respondent

CORAM :

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)

FINAL ORDER NO. 42291 / 2021

Date of Hearing: 02.09.2021
Date of Decision: 02.09.2021

At the outset, Ld. Counsel Dr. S. Krishnanandh submitted that show cause notice in the present case has been issued by Additional Director, D.R.I. which is dated 25.02.2011. This is prior to the amendment introduced in Section 28 (11) of the Customs Act, 1962.

It is also submitted by him that Section 28(11) which was amended also includes Section 17 of the Act ibid.

2. It is further submitted by Ld. Counsel that it is settled position that D.R.I has no powers to issue show cause notice as per the decision of the Hon'ble Supreme Court in the case of *Canon India Pvt. Ltd. Vs Commissioner of Customs* reported in 2021 (3) SCALE 748. He also produced a copy of the order of the Hon'ble Supreme Court in Civil Appeal No.3411 of 2020 in CC, Kandla Vs *Agarwal Metals and Alloys* to argue that the Hon'ble Apex Court has applied the said decision and dismissed the appeals filed by the department vide judgement dt. 31.08.2021.

3. Ld. A.R Shri R. Raja Raman appeared for the department.

4. The proceedings are initiated from the show cause notice dated 25.02.2011 issued by D.R.I. The Hon'ble Supreme Court in the case of *Canon India Pvt. Ltd. Vs Commissioner of Customs* (supra) has held that D.R.I officer is not proper officer within the meaning of Section 28 (4) read with Section 2 (34) of the Customs Act, 1962. Though the Revenue has filed a review application against the said judgement, it is noted that as per the recent decision of the Hon'ble Apex court in the case of *Agarwal Metals and Alloys* (supra), the Hon'ble Apex Court has dismissed the appeal filed by the department following the decision in the case of *Canon India Pvt. Ltd.*. The said Apex Court's order reads as under :

"Delay condoned.

In view of decision dated 09.03.2021 of three judge Bench of this Court in Civil Appeal No. 1827 of 2018 titled as M/s.Canon India Private Ltd. vs. Commissioner of Customs' reported in 2021 (3) SCALE 748, these appeals must fail as the show cause notices (s) in the present cases was also issued by Additional Director General (ADG), Directorate of Revenue Intelligence (DRI), who is not a proper officer within the meaning of Section 28 (4) read with Section 2 (34) of the Customs Act, 1962.

Hence, these appeals stand dismissed.

However, dismissal of these appeals will not come in the way of the competent authority to proceed in the matter in accordance with law.

Pending application (s), if any, stand disposed of."

5. Following the same, I am of the view that the demand raised cannot sustain as show cause notice is vitiated being without jurisdiction to issue the same. Proceedings imposing penalty cannot sustain as the SCN is issued without jurisdiction. The impugned order is set aside. The appeal is allowed with consequential relief, if any.

(Dictated and pronounced in open court)

(**SULEKHA BEEVI C.S.**)
Member (Judicial)

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