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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 07.05.2024

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CUSAA 88/2023

PRINCIPAL COMMISSIONER OF CUSTOMSAppellant

Versus

M/S. LINEAR TECHNOLOGIES INDIA PVT. LTD..... Respondents

Advocates who appeared in this case:

For the Appellant: Mr. Ajit Sharma, Senior Standing Counsel with Mr. A. Renganath and Mr. Kanchan Kumar, Advocates
For the Respondents: Mr. Ashok Kumar Mehta and Praveen Kumar Sood, Advocate

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Appellant/Principal Commissioner of Customs impugns order dated 23.09.2022, passed by the Customs Excise and Service Tax Appellate Tribunal, Principal Bench whereby the appeal filed by the respondents impugning the order-in-original dated 30.03.2012 was allowed and the order-in-original set aside.

2. An objection has been taken on behalf of the respondents that the subject appeal is below the monetary limit prescribed by the Central Board of Indirect Taxes and Customs (hereinafter referred to as the Board) for filing an appeal before the High Court.



3. It is not in dispute that the duty involved in the subject appeal is Rs.86,34,821/-. In addition to the duty involved in the subject appeal, a penalty of Rs.10,00,000/- was imposed on the respondent No.2, the Director of respondent No.1 and a redemption fine of Rs.15,00,000/- was also imposed.

4. As per learned counsel for respondents, the threshold limit for filing an appeal to the High Court as fixed by the circular dated 02.11.2023 read with circular dated 20.10.2010 is Rs.1,00,00,000/- and the duty involved in the subject appeal being less than Rs.1,00,00,000/-, the appeal could not have been filed.

5. This is disputed by learned counsel for appellant, who submits that cumulatively the duty, penalty and redemption fine involved in the subject case is Rs.1,31,34,821/-, which is in excess of Rs.1,00,00,000/-.

6. Reference may be had to circular dated 20.10.2010 on the subject “Reduction of Government litigation - providing monetary limits for filing appeals by the Department before CESTAT and High Courts - Regarding”. Paragraph 5 of the circular reads as under:-

“5. The Board has decided that appeals in the Tribunal shall not be filed where the duty involved or the total revenue including fine and penalty is Rs 1 Lakh and below. Similarly in the case of High Courts appeals should not be filed in cases where the duty involved or total revenue including fine or penalty is Rs 2 lakhs and below. While deciding the thresholds



mentioned above, the duty involved shall be the decisive element. For example, in a case involving duty of Rs 1 lakh with mandatory penalty of Rs. 1 lakh besides any other penalty imposed under the relevant provisions of Law, no appeal shall henceforth be filed in the Tribunal as the duty involved is within the monetary limit of Rs 1 lakh. Similarly, if the duty involved in a case is Rs 2 lakhs with equal mandatory penalty and any other penalty imposed under the Law in force at the relevant time, no appeal shall be filed before the High Court.”

7. Paragraph 5 of the circular stipulates that appeal shall not be filed where the duty involved or the total revenue including fine and penalty in respect of the High Court is Rs.2,00,000/- and below. The decisive element for the purposes of deciding the threshold, being the duty involved.

8. The example given shows that in a case involving a duty of Rs.1,00,000/- with penalty of Rs.1,00,000/-, no appeal is to be filed to the Tribunal and similarly, in a case involving duty of Rs.2,00,000/- with equal mandatory penalty of Rs.2,00,000/-, no appeal is to be filed to the High Court. The threshold limit for filing an appeal to the Tribunal and High Court was Rs.1,00,000/- and Rs.2,00,000/-, respectively as fixed by the said circular.

9. The example makes it clear that where the duty involved for the purposes of High Court was Rs.2,00,000/- and the penalty was also of Rs.2,00,000/-, cumulatively above the threshold limit of Rs.2,00,000/- However, the decisive factor being the duty element only, the Board



directed no appeal to be filed.

10. Said circular was subsequently amended by instructions dated 17.08.2011, wherein the monetary limit for Tribunal was enhanced from Rs.1,00,000/- to Rs.5,00,000/- and for the High Court from Rs.2,00,000/- to Rs.10,00,000/-. The Instructions dated 17.08.2011 further clarified that for ascertain where a matter would be covered within or without the prescribed limited, the determinative element would be the duty/tax under dispute. The example cited once again was identical though with the higher threshold limit. The instructions further clarified that where imposition of penalty was subject matter of dispute and said penalty exceeded the limit prescribed, then matter could be litigated and where subject matter of dispute was demand of interest and the interest exceeded the prescribed limit, the matter could be proceeded further.

11. The Instructions dated 17.08.2011, however, added two caveats for permitting the proceedings to be contested irrespective of the amount involved in the following cases:-

“a) Where the constitutional validity of the provisions of an Act or Rule is under challenge.

b) Where Notification/ Instruction/ Order or Circular has been held illegal or ultra vires”

12. Further clarification was issued by instructions dated 26.12.2014 with regard to cases of recurring nature. Said instructions dated 26.12.2024 clarified that applicability of monetary limit to cases



of recurring nature would also continue to apply and all case including cases of recurring nature covered under instructions of monetary limit, no appeal was to be filed except in cases covered by the two exclusion clauses introduced vide instructions dated 17.08.2011, noticed hereinabove.

13. By instructions dated 17.12.2015, a third exception was added, which is as under:-

“classification and refunds issues which are of legal and/or recurring nature”

14. It was also clarified by the instructions that in cases where appeals were already instituted prior to fixation of monetary limit, said appeals were also to be withdrawn and not pursued. Direction was issued by instruction dated 01.01.2016 to the above effect and all Chief Commissioners were required to take immediate action to withdraw the appeals pending before the Tribunal, High Courts and Supreme Court, respectively which were below the threshold limit.

15. By latest circular dated 02.11.2023, the monetary limit has been enhanced for the Tribunals to Rs.50,00,000/-, High Courts to 1,00,00,000/- and Supreme Court to 2,00,00,000/- with rest of the conditions being applicable including the three exceptions.

16. In the instant case, the determinative factor being the duty element is Rs.86,34,821/-. In view of the above, the appeal is clearly covered by the circulars prescribing minimum monetary limit for



filing an appeal. The example cited in the circulars as noticed hereinabove clearly negates the argument of learned counsel for the appellant that cumulatively the amount being more than the threshold limit, the appeal would be maintainable. Hence the same has no merit and cannot be accepted.

17. For the purposes of determining the threshold limit, it would only be the duty element which would be taken into account and the same could not be clubbed with penalty and redemption fine.

18. In cases involving duty, fine, penalty and interest, the decisive element would only be duty. However, in cases where duty is not in issue and only fine and penalty are in issue then they would cumulatively be the decisive factor for determining the applicability of threshold limit.

19. Since the duty element involved in the subject appeal is less than the threshold limit, we are of the view that the appeal would not lie in view of the said instructions. The same is accordingly dismissed on the ground of low tax effect.

SANJEEV SACHDEVA, J

MAY 07, 2024/NA

RAVINDER DUDEJA, J