

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं

श्री डि.एस. सुन्दर सिंह, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.848/Mds/2016

निर्धारण वर्ष / Assessment Year : 2006-07

The Assistant Commissioner of  
Income Tax,  
Corporate Circle 2(1),  
Chennai - 600 034.

v.

M/s Five Star Marine Exports Pvt.  
Ltd.,  
New No.70 (Old No.35),  
Venkatesa Street, Chintadripet,  
Chennai - 600 002.

(अपीलार्थी/Appellant)

PAN : AAACF 3541 N

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri Supriyo Pal, JCIT

प्रत्यर्थी की ओर से/Respondent by : Sh. Philip George, Advocate

सुनवाई की तारीख/Date of Hearing : 23.02.2017

घोषणा की तारीख/Date of Pronouncement : 23.03.2017

### **आदेश /O R D E R**

**PER N.R.S. GANESAN, JUDICIAL MEMBER:**

This appeal of the Revenue is directed against the order of the Commissioner of Income Tax (Appeals) – 6, Chennai, dated 29.01.2016 and pertains to assessment year 2006-07.

2. Shri Supriyo Pal, the Ld. Departmental Representative, submitted that the assessee had produced additional evidence before the CIT(Appeals). The additional evidences are invoices which contained the name of the importer and name of the ultimate buyer, etc. These details according to the Ld. D.R., were not available before the Assessing Officer. The CIT(Appeals), after considering the additional material filed by the assessee, has allowed the claim of the assessee without verifying other details contained therein. Moreover, according to the Ld. D.R., no opportunity was given to the Assessing Officer, therefore, there was violation of Rule 46A of the Income-tax Rules, 1962.

3. On the contrary, Shri Philip George, the Ld. counsel for the assessee, submitted that the issue arises for consideration is disallowance of ₹3,77,46,687/- on account of Dumping Duty. The assessee filed written statement before the CIT(Appeals). According to the Ld. counsel, the assessee explained before the Assessing Officer that the duty paid has been recovered from the buyers and it is not borne by the assessee-company. The assessee has also claimed before the Assessing Officer that the Anti Dumping Duty was included in the total value of invoice. To support the

claim, according to the Ld. counsel, the assessee has produced invoices before the CIT(Appeals) in the form of paper-book. These invoices contained the names of the assessee-company, importer on record and name of the ultimate buyer. The invoices disclose that the Anti Dumping Duty at the rate of 10.17% of invoice value. According to the Ld. counsel, the assessee has also produced details of name of the ultimate buyer including the Anti Dumping Duty, therefore, the CIT(Appeals) has rightly allowed the claim of the assessee.

4. We have considered the rival submissions on either side and perused the relevant material available on record. The assessee claimed before the Assessing Officer that the Anti Dumping Duty was included in the total value of invoices. The assessee has also claimed that Anti Dumping Duty paid by the buyer which was evidenced from the invoices produced before the CIT(Appeals). From the material available on record, it appears the invoices which disclose certain details with regard to payment of Anti Dumping Duty and ultimate buyer were not available before the Assessing Officer. The Assessing Officer had no occasion to examine the same. The CIT(Appeals) has also without verifying the

genuineness of so-called invoices, allowed the claim of the assessee. Therefore, this Tribunal is of the considered opinion that there is a clear violation of Rule 46A of the Income-tax Rules, 1962. Therefore, the Assessing Officer has to examine the matter afresh. Accordingly, the orders of the authorities below are set aside and the issue raised by the assessee is remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the matter afresh in the light of the invoices and other documentary evidence filed before the CIT(Appeals) and shall decide the issue afresh, in accordance with law, after giving a reasonable opportunity to the assessee.

5. In the result, the appeal filed by the Revenue is allowed for statistical purposes.

Order pronounced on 23<sup>rd</sup> March, 2017 at Chennai.

sd/-  
(डि.एस. सुन्दर सिंह)  
(D.S. Sunder Singh)  
लेखा सदस्य/Accountant Member

sd/-  
(एन.आर.एस. गणेशन)  
(N.R.S. Ganesan)  
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,  
दिनांक/Dated, the 23<sup>rd</sup> March, 2017.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-6, Chennai
4. Principal CIT-2, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.