

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.04.2015

CORAM:

THE HONOURABLE MR. JUSTICE SATISH K. AGNIHOTRI
and
THE HON'BLE MR JUSTICE M. VENUGOPAL

W.A. No.333 of 2015

and

M.P. No.1 of 2015

Canbo Electronics Private Ltd.
represented by its Managing Director
Jose Thomas Pattara
Door No.41/3197 B, I Floor, Bageeratha Square
Banerjee Road, Kacheripaddy
Cochin - 682 018

...Appellant

vs.

1 The Customs and Central Excise Settlement Commission
Additional Bench
Custom House
No.60 Rajaji Salai
Chennai 600 001

2 The Commissioner of Customs
Customs House
Wellington Island
Cochin 682 009

...Respondents

Writ Appeal filed under Clause 15 of the Letters Patent
challenging the order dated 25.11.2014 passed in W.P. No.3056 of 2013.

Writ Petition filed praying to issue a writ of Certiorari calling
for the records pertaining to Final Order No.30/2012-CUS dated
06.11.2012 in F.No.,S.A.Cus/28-30/2012-SC passed by the first
respondent and quash the same as far it relates to imposition of fine
and penalty.

For appellant : Mr. Hari Radhakrishnan

For R1 : Mr. P. Mahadevan

JUDGMENT

(Judgment of the Court was made by SATISH K. AGNIHOTRI, J.)

Questioning the legality, validity and propriety of the order dated 25.11.2014 passed in W.P. No.3056 of 2013, the writ petitioner has come up with the instant intra-Court appeal, mainly on the question of imposition of redemption fine without proper market survey, as required under Section 125 of the Customs Act, 1962 (for short "the Act").

2. According to the learned counsel for the appellant, a show cause notice was issued in respect of the alleged short-payment of customs duty on the imported goods on a value lesser than the actual one. Section 125 of the Act provides for levying redemption fine in lieu of confiscation, which should not exceed the market price of the goods confiscated. Thus, confirming the final order dated 06.11.2012 passed by the first respondent, being the subject matter in the writ petition, by the learned Single Judge, was not just and proper and contrary to the well settled ratio laid down by the Supreme Court in Commissioner of Customs, Mumbai vs. Mansi Impex¹.

3. Per contra, Mr. P. Mahadevan, learned counsel appearing for the first respondent-Settlement Commission submits that on finding that the appellant had imported certain goods illegally, without licence, a show cause notice was issued by the Directorate of Revenue Intelligence, calling upon the appellant to show cause to the Additional Commissioner of Customs, Cochin, (i) as to why the declared value of the goods in the concerned Bills of Entry should not be rejected, (ii) why the goods should not be confiscated, (iii) why the amount of Rs.42 lakhs should not be appropriated towards differential duty amount of Rs.35,48,881/- with interest and (iv) why the amount of Rs.7,36,100/- which has been unaccounted in their office, be seized. The appellant has admittedly the full duty liability to the tune of Rs.35,48,881/-, along with applicable interest, as demanded under the show cause notice. Thus, the order impugned before the learned Single Judge was rightly passed imposing redemption fine.

4. The learned Single Judge, considering the submissions advanced by both the parties, held as under:

"9. However, finding of the Commission insofar as the penalty imposed on the company as well as on the co-applicant is concerned, the Bench has not specifically recorded any finding. This in my view, would require reconsideration in the light of the fact that already redemption fine has been imposed. Hence, to that extent, the impugned order calls for interference. Accordingly, the writ petition is partly allowed and the findings of the Settlement Commission

¹ 2011 (270) ELT 631 (SC)

insofar as it relates to penalty in Paragraph 15.1 (d), (e) and (f) are set aside and the matter is remanded to the Settlement Commission for fresh consideration, to consider as to whether there is need for imposition of penalty on the company as well as the Directors of the company."

5. The question before us is as to whether redemption fine can be imposed without making a proper market survey to find out the market price, as prescribed under the provisions of Section 125 of the Act.

6. Section 125 of the Act came into consideration in *Mansi Impex*¹ (supra), wherein, the Supreme Court held as under:

"12. Section 125 of the Act being the provision for levying the redemption fine in lieu of confiscation, the said provision is to be strictly followed and, therefore, said redemption fine should be imposed by the competent authority which amount would not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

13. It is true that in the present case, the respondents had imported marble blocks without any licence and, therefore, their goods which were sought to be imported, were confiscated. On payment of duty as determined, the question that arose was as to what would be the redemption fine payable, if any. The said issue was considered by the Commissioner and thereafter, he had imposed redemption fine in lieu of confiscation and also penalty in terms of the provisions of Sections 125 and 112 of the Act respectively. However, the aforesaid orders passed by the Commissioner came to be interfered with by the Tribunal whereby the Tribunal reduced the quantum of redemption fine as also the penalty."

7. Thus, it is the requirement of law that the amount of redemption fine should not exceed the market price of the goods confiscated and the same can be obtained only on market survey, which, in the instant case, has not been done.

8. Since the learned Single Judge has already remitted back the matter to the Settlement Commission in respect of imposition of penalty, we are of the considered view that the Settlement Officer, while re-considering the imposition of penalty, shall also examine the imposition of redemption fine, following due process of law, as observed by the Supreme Court in *Commissioner of Customs, Mumbai vs. Mansi Impex*¹ in accordance with Section 125 of the Act.

¹ 2011 (270) ELT 631 SC

9. The writ appeal stands partly allowed, maintaining the other part of the impugned order rendered by the learned Single Judge. Costs made easy. Connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

cad

To

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Additional Bench
Custom House
No.60 Rajaji Salai
Chennai 600 001

2 The Commissioner of Customs
Customs House
Wellington Island
Cochin 682 009

1 CC to Mr. Hari Radhakrishnan, Advocate SR.No. 20761

1 CC to Mr. P. Mahadevan, Advocate SR.No. 20630

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CNR (CO)
PSI (27.04.2015)

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