IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2015

CORAM

THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE T.MATHIVANAN

C.M.A.No.1701 of 2007

The Commissioner of Customs (Exports)
Custom House
Chennai 600 001 .. Appellant/Respondent

-vs-

1. M/s Jay Ar Enterprises
No.7, N.S.Krishnan Street
Eshwaran Nagar
Pammal
Chennai 600 075

2. Customs, Excise and Service Tax
Appellate Tribunal
South Zonal Bench
Shastri Bhavan Annexe
First Floor, 26, Haddows Road
Chennai 600 006 .. Respondents/Appellant

Memorandum of Grounds of Civil Miscellaneous Appeal under Section 130 of the Customs Act, 1962 against the Final Order No.1263/2006 dated 05.12.2006 on the file of the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai.

For Appellant :: Mr.A.P.Srinivas
Senior Panel Counsel

For Respondents:: Mr.T.Ramesh for R1

JUDGMENT

(Judgment of the Court was delivered by V.RAMASUBRAMANIAN, J.)

This appeal is by the Commissioner of Customs under Section 130 of the Customs Act, 1962.

2. Heard Mr.A.P.Srinivas, learned Senior Panel Counsel for the appellant and Mr.T.Ramesh, learned counsel for the first respondent.

3. The first respondent filed four shipping bills dated 22.4.2002, 1.7.2002, 12.7.2002 and 24.7.2002 for the export of finished leather falling under Heading 4106.19.09 of the First Schedule to the Customs Tariff Act. In respect of three out of four shipping bills, the first respondent realised the sale proceeds in foreign exchange. Therefore DEPB Credit in two scrips were obtained.

4. But before the sale proceeds under the fourth shipping bill could be realised, the goods were rejected by the foreign buyer. However, the first respondent filed a bill of entry dated 15.3.2004, which, according to the appellant, contained a misdeclaration as to the country of origin. Therefore, after examining the goods, the department came to the conclusion that the goods covered by the bill of entry were the same as those exported under the four shipping bills.

5. As a consequence, confiscation proceedings were initiated and a show cause notice dated 11.8.2004 was issued under Section 124. The proposal was contested and the first respondent claimed the benefit of exemption in terms of Serial No.3 of the Table annexed to Notification No.94/96-Cus.

6. But the claim of the first respondent was rejected by the Commissioner, who ordered confiscation with the option for redemption on payment of fine. He also imposed a penalty and directed them to produce DEPB for debiting an amount of Rs.7,06,344/-. The redemption fine imposed by the Commissioner in lieu of the confiscation of the goods valued at Rs.84,19,320/- was Rs.10,00,000/-. The penalty imposed was Rs.5,00,000/-. The penalty was set aside by the CESTAT by an order dated 5.12.2006, forcing the Revenue to come up with the above appeal. It must be pointed out that the first respondent has not so far brought up any appeal as against the redemption fine.

7. The fine imposed by the Commissioner of Customs in his order-in-original dated 30.9.2004, was under Section 112(a)(ii) of the Customs Act, 1962. Under Section 112(a)(ii), a person who does any act by which certain goods become liable to confiscation under Section 111, is liable to penalty. But the penalty is leviable, only if the goods in relation to which he is found liable for confiscation, are dutiable goods other than prohibited goods. There is no dispute about the fact that the goods in question in the case on hand were not dutiable goods, by virtue of the exemption notification.

8. Therefore the Tribunal rightly relied upon the law laid down in paragraphs 79 and 80 of the decision of the Supreme Court in Associated Cement Companies Ltd., v. Commissioner of Customs, 2001 (128) E.L.T.21. Since the Tribunal has followed only the express language of Section 112(a)(ii) as interpreted by the Supreme Court in

the case of Associated Cement, we find no merits in the appeal. Hence the appeal is dismissed and the questions of law are answered against the appellant. No costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

ss

To
1. The Commissioner of Customs (Exports)
Custom House
Chennai 600 001

2. The Customs, Excise and Service Tax
Appellate Tribunal
South Zonal Bench
Shastri Bhavan Annexe
First Floor
No.26, Haddows Road
Chennai 600 006

+1 cc to Mr.A.P.Srinivas Advocate sr.48401

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