IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.07.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
and
THE HONOURABLE Ms.JUSTICE K.B.K.VASUKI

Civil Miscellaneous Appeal No.2429 of 2009

Commissioner of Customs (Port Export)
Customs House,
No.60, Rajaji Salai,
Chennai - 600 001.
.. Appellant

versus

1. Shri.M.Renganathan,
M/s.Eastern Maritime (P) Ltd.,
No.235, (112), Angappa Naicken Street,
2nd Floor, Chennai - 600 001.

2. Customs, Excise and Service Tax Appellate Tribunal,
South Zonal Bench, Shastri Bhavan Annex,
1st Floor, No.26, Haddows Road, Chennai - 600 006.
.. Respondents

PRAYER: APPEAL filed under Section 130 of the Customs Act, 1944 against the order dated 12.09.2008 made in Final Order No.995 of 2008 on the file of the Customs, Excise and Service Tax Appellate Tribunal, Chennai.

For Appellant : Mr.K.Mohanamurali
For Respondents : Mr.T.V.Suresh Kumar - R1

J U D G M E N T

(Delivered by R.SUDHAKAR,J.)

This Civil Miscellaneous Appeal filed against the order of the Tribunal dated 12.09.2008 made in Final Order No.995 of 2008 on the file of the Customs, Excise and Service Tax Appellate Tribunal, Chennai was admitted by this Court on the following substantial question of law:

"Whether on the facts and circumstances of the case, the Tribunal is right in law in deleting the penalty levied on the respondent by the original authority, which has been upheld by the appellate authority on the ground that there is no evidence to prove the guilty mind of the respondent and on the face of the judgment of the Supreme Court in Union of India v. Rajasthan Spinning & Weaving Mills [2009 (238) ELT 3], Commissioner of Central Excise, Pune v. S.K.F. India Ltd. [2009 (239) ELT 385] and Union of India v. Dharmendra Textiles Processors [(2008) 306 ITR 277]"

2. The question of law admitted by this Court has been wrongly framed, as if the penalty should be mandatory in view of the decision in the case of Union of India v. Rajasthan Spinning & Weaving Mills [2009 (238) ELT 3], Commissioner of Central Excise, Pune v. S.K.F. India Ltd. [2009 (239) ELT 385] and Union of India v. Dharmendra Textiles Processors [(2008) 306 ITR 277] . It is not a case on hand. It is a case of penalty imposed under Section 114 of the Customs Act. Hence, the question of law is re-framed as follows:

"Whether the Tribunal was justified in setting aside the penalty imposed under Section 114 of the Customs Act."

3. The brief facts of the case are as follows:

Alleging that the first respondent had filed shipping documents to export red sanders, which is prohibited, under the guise of natural slate stone, show cause notice was issued to show cause as to why the goods should not be confiscated and penalty should not be imposed. In response to the said notice, the first respondent had filed a reply stating that he had signed the shipping bill for export of natural slate stone and he had not handled the export clearance of the subject goods. He further stated that he did not know the actual exporter. The Adjudicating Authority, after due process of law, adjudicated the matter and passed an order confirming the penalty of Rs.25,000/- imposed on the first respondent. Aggrieved by the said order, the first respondent herein had filed an appeal before the Commissioner (Appeals), who upheld the order of the Adjudicating Authority. Aggrieved thereby, the first respondent pursued the matter before the Tribunal. The Tribunal accepted the contention of the first respondent and allowed the appeal holding as follows:

"Heard both sides.

2. The finding against the appellant is that he failed to know the exporter, failed to obtain authorization from the exporter as required under Regulation 13A of the CHALR, 2004 and that he signed the Annexure to the Shipping Bills and handed over to one Rajan who handled the consignment. The consignments declared as natural slate stones was found to be red sanders and seized and proceeded against as per the

Customs Act. The original authority imposed a penalty of Rs.25,000/- on the appellant under Section 114 of the Customs Act which has been upheld by the Commissioner (Appeals).

3. The evidence available does not indicate knowledge of export of red sanders in the consignment and not to talk of any intention on the part of the appellant. The failures, if any, may attract the provisions of Customs House Agents' Regulations. Without expressing views on the role of other parties to the order, I hold that there is no evidence for imposing penalty on the appellant under Section 114 of the Customs Act."

4. Aggrieved by the order of the Tribunal, the Department is before this Court.

5. Heard learned Standing Counsel appearing for the appellant and the learned counsel appearing for the first respondent and perused the materials placed before this Court.

6. It is seen from the order of the Tribunal that the finding of the Tribunal is that there was no material evidence or finding by the Adjudicating Authority to come to the conclusion that the first respondent was having knowledge of the export of the goods improperly. The Tribunal further holds that there is no evidence to indicate that the first respondent had knowledge of export of red sanders in the consignment in the guise of natural slate stone and that provisions of Sec.114 of the Customs Act is not attracted. It observed that the only plausible action that could have been taken is under the provisions of Customs House Agent Regulation Rules.

7. In view of the finding of fact by the Tribunal, which is a final fact finding authority, in favour of the respodnent, we are not inclined to interfere with the order of the Tribunal. Accordingly, the question of law is answered against the Revenue and in favour of the assessee and this Civil Miscellaneous Appeal stands dismissed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

Customs, Excise and Service Tax Appellate Tribunal,
Shastri Bhavan Annex, No.26, Haddows Road, Chennai - 600 006.

+1 cc to M/s.MohanaMurali Advocate sr.32841

C.M.A.No.2429 of 2009

rsi(co)
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