

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.03.2015

Coram

The Honourable Mr.Justice R.SUDHAKAR
and

The Honourable Mr.Justice R.KARUPPIAH

Civil Miscellaneous Appeal No.583 of 2010

The Commissioner of Customs (Import)
Custom House, No.60, Rajaji Salai,
Chennai - 600 001.

.... Appellant

-vs-

M/s.Patel Engineering Ltd.,
6-3-635 & 637, 4th Floor,
Akash Ganga,
Khairatabad
Hyderabad - 500 004.

.... Respondent

Civil Miscellaneous Appeals filed under Section 130 of the Customs Act, 1962 against the order dated 19.08.2009 made in Final Order No.1010 of 2009 on the file of Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai-6.

For Appellant : Mr.E.Vijay Anand
For Respondent : Mr.S.Murugappan

J U D G M E N T

(Delivered by R.SUDHAKAR, J.)

This Civil Miscellaneous Appeal filed by the Revenue as against the order of the Tribunal was admitted by this Court on the following substantial questions of law:

"1.Whether CESTAT has got power to reduce the fine and waive the penalty in toto when both are mandatory under statute and more so when the Supreme Court has held in the negative against such exercise of power by the Tribunal as held in 2008(231) E.L.T.(SC) and 2009 (238) ELT 3 (SC)?

2. Whether the order of CESTAT, waiving the penalty imposed under Section 112 of the Customs Act 1962 for commission of an offence which rendered the goods for confiscation under Section 111 of the Customs Act 1962, is correct when CESTAT has upheld the confiscation of the goods under Section 111 of the Act ibid?"

2. The first substantial question of law admitted by this Court does not arise for consideration in the facts of the present case, since the adjudication order does not contemplate imposition of mandatory penalty. However, the second question of law requires consideration in the facts of the present case.

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

The respondent filed Bill of Entry No.376273 dated 29.1.2002 for clearance of the goods declared as "Hot mix plant Batch type with electronic controls and bag type filter arrangement 160TPH". On examination of the imported goods, the Commissioner of Customs held that the goods imported by the respondent under Bill of Entry dated 29.1.2002, namely, screen drum, electrical cabinets, geared motors and conveyor belts, bearings etc. were only components of complete hot mix plant and not a complete hot mix plant and fixed the value of the imported goods at DM 5.50 lakhs CIF; consequently, denied exemption from duty in terms of Notification No.17/2001-Cus. and ordered confiscation of goods under Section 111(m) of the Customs Act with an option to redeem the same on payment of fine of Rs.5,00,000/- and imposed penalty of Rs.1,00,000/-.

4. Aggrieved by the said order of the Commissioner, the respondent/importer filed an appeal before the Tribunal. The Tribunal, by placing reliance on the decision in the case of IVRCL Infrastructures and Projects Ltd. V. Commissioner of Customs reported in 2004 (166) ELT 447 held that in an identical situation, the Tribunal rejected the plea of the importers and upheld the denial of exemption under Notification, but reduced the fine and set aside the penalty. Accordingly, in the present case, the Tribunal reduced the fine from Rs.5.00 lakhs to Rs.1.00 lakh and set aside the penalty.

5. Aggrieved by the said order of the Tribunal, the Revenue is before this Court contending that on confiscation, penalty shall be imposed as per the provisions of the Customs Act.

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

7. We find that the contention of the Department appears to be justified for more than one reason. Section 112 of the Customs Act provides for imposition of penalty, which reads as follows:

"SECTION 112. Penalty for improper importation of goods, etc. - Any person, -

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, shall be liable, -

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is the greater;

(ii) in the case of dutiable goods, other than prohibited goods, to a penalty not exceeding the duty sought to be evaded on such goods or five thousand rupees, whichever is the greater;

(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty not exceeding the difference between the declared value and the value thereof or five thousand rupees, whichever is the greater;

(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest;

(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest."

8. A plain reading of Section 112 of the Customs Act makes it clear that once confiscation is ordered, levy of penalty is automatic. In the case of IVRCL Infrastructures and Projects Ltd. V. Commissioner of Customs reported in 2004 (166) ELT 447, we find that penalty has been set aside only on the ground that no adequate evidence was found, which render the goods liable for confiscation. Since there was no proper finding, the penalty was set aside.

9. In the present case, on examination of the imported goods, import documents and the correspondences between the respondent/importer, the supplier and the local representative, the Commissioner came to the conclusion that the importer misdeclared the goods. Further, it is admitted by the respondent/importer that the goods imported are certain components of the hot mix plant and not a complete plant. Since the respondent has misdeclared the goods as

hot mix plant, the Commissioner came to the conclusion to confiscate the goods. Once confiscation is ordered, penalty is automatic.

10. As the respondent/importer had admitted the position and their evidence is also very clear stating that they had imported only parts of hot mix plant and not entire plant, the above-said decision in the case of IVRCL (supra) does not apply to the facts of the present case. Further, the correspondences between the respondent/importer, the supplier and the local representative clearly show that the importer was aware that the goods were only components and not entire plant.

11. Similar view was taken by this Court in the case of Commissioner of Customs (AIR), Chennai V. A.P.Pinherio reported in 2014 (306) E.L.T. 349 (Mad) 2014 306 ELT, wherein it was held as follows:

"12. We have perused the show cause notice as well as the order of the Original Authority. It has been pointed out by the Department that the entire importation has been handled by the Managing Director of the company and all the correspondences between various Authorities were personally handled by the Managing Director and therefore, he was fully aware that the firm had imported the subject goods. Therefore, he cannot plead ignorance of the facts. Furthermore, the respondent had not questioned the order of confiscation or the imposition of duty. Thus, the order of confiscation has attained finality and there is no discretion vested under Section 112(a) of the Customs Act and there is no requirement to record a finding that there has been any wilful misstatement or concealment or suppression of facts, as is found under Section 114A of the Customs Act.

13. In such view of the matter, the Tribunal was not right in setting aside the penalty imposed on the Managing Director under Section 112(a) of the Customs Act. Further, it has to be pointed out that under Section 112(a), any person, who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111, or abets the doing or omission of such an act, shall be liable to pay penalty not exceeding the duty sought to be evaded on such goods or five thousand rupees, whichever is greater. Thus, considering the facts, the Managing Director is liable to pay penalty, which is fixed at Rs.5,000/-.

12. In the light of the above, following the above-said decision of this Court, the question of law is answered in favour of the Revenue and against the respondent/importer. Accordingly, the order of the Tribunal stands set aside and the order of the Commissioner stands restored.

In the result, this Civil Miscellaneous Appeal is allowed. No costs.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

1.The Customs Excise & Service Tax
Appellate Tribunal,
South Zonal Bench,
Shastri Bhawan Annexe,
First Floor, 26, Haddows Road,
Chennai - 600 006.

2.The Record Keeper,
V.R.Section, High Court, Madras.

+1 cc to Mr.E.Vijay Anand, Advocate,SR.15932.

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C.M.A.No.583 of 2010

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