IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 03.07.2015

CORAM

THE HONOURABLE MR. JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MS. JUSTICE K.B.K.VASUKI

C.M.A. NO. 666 OF 2010
AND
M.P. NO. 1 OF 2010

Commissioner of Customs (Air)
Air Cargo Complex
Meenambakkam
Chennai 600 027. ... Appellant

- Vs -

1. T.Soundararajan

2. Customs, Excise & Service
Tax Appellate Tribunal
South Zonal Bench
Shastri Bhavan Annexe
1st Floor, 26, Haddows Road
Chennai 600 006. ... Respondents

Appeal filed against the order dated 19.8.09 passed by the Customs, Excise & Service Tax Appellate Tribunal, South Zonal Bench, Chennai, made in Final Order No.1014 of 2009.

For Appellant : Mr. P.Mahadevan

For Respondents : Mr. A Ganesh for R-1

JUDGMENT
(DELIVERED BY R.SUDHAKAR, J.)

Aggrieved by the order of the Tribunal in modifying the order in favour of the assessee, the Revenue is before this Court by filing the present appeal. This Court, vide order dated 10.03.2010, while admitting the appeal, framed the following substantial questions of law for consideration :-

"i) Whether the Tribunal was right in reducing the fine and penalty by interfering with the discretionary power of the adjudicating authority conferred under Section 125 of the Customs Act, especially when the currencies were attempted to be exported in violation of the Foreign Exchange Management (Import & Export of Currency) Regulation, 2000, which tantamount to prohibition under Section 11 of the Customs Act, 1962?

ii) Whether the Tribunal was right in reducing the fine and penalty without assigning any reasons and simply following its own earlier decisions when the facts and circumstances are entirely different in each and every case?

iii) Whether the Tribunal was right in interfering with the order of the original authority which is passed under Section 125 of the Act that empowers the authority to give an option for redeeming the goods on payment of fine which is a discretion provided under the Act as held by the Supreme Court in 1998 (104) ELT 306 (SC))?"

2. The case pertains to a case of seizure of foreign currency from the first respondent by the Intelligence Officer at the Anna International Airport, Chennai. Further to the same, foreign currency to the tune of USD 53,500 and Indian currency to the tune of Rs.32,500/= were seized from the first respondent. After several rounds of litigation through the various forums, finally the matter was adjudicated by the Commissioner of Customs, and order was passed permitting the first respondent to redeem the seized currency, viz., US $ 53,500 and Indian currency Rs.32,500, on payment of redemption fine of Rs.11,00,000/= and penalty of Rs.2,50,000/=. Aggrieved by the said order, the first respondent preferred appeal to the Tribunal.

3. The Tribunal, by a cryptic order, modified the redemption fine and penalty to the extent of Rs.6,00,000/= and Rs.1,00,000/= respectively without recording any reason. For better clarity, the order as such is extracted hereinbelow :-

"Vide the impugned order the Commissioner of Customs has permitted redemption of foreign currency of USD 53,500 and Indian currency amounting to Rs.32,500/= seized from the appellant herein at Chennai when he was about to board Indian Airlines Flight No.IC 555 on 22/23.11.2005 for Singapore, on payment of a fine of Rs.11,00,000/= and penalty of Rs.2,50,000/= upon the appellant. Hence this appeal.

2. The appellant seeks reduction in the quantum of both fine and penalty. In the light of the earlier

> order of the Tribunal in Shri S.Pandithurai - Vs - Commissioner of Customs, Final Order No.325/2009 dated 30.3.2009, wherein fine and penalty were reduced, we reduce the fine and penalty in this case as well. Applying the same ratio and having regard to the value of the goods in question as on date of adjudication, viz., Rs.22 Lakhs, we reduce the fine and penalty to Rs.6,00,000 (Rupees Six Lakhs only) and Rs.1,00,000/= (Rupees One Lakh only) respectively."

4. Aggrieved by the said order of the Tribunal in reducing the quantum of redemption fine and penalty, the Department is before this Court by filing the present appeal on the above questions of law.

5. Though very many grounds have been raised in the appeal assailing the impugned order, learned standing counsel appearing for the Department contended that the Tribunal has not recorded any reason for reducing the quantum of redemption fine and penalty, but relied upon an order passed by the Tribunal in another case and mechanically reduced the fine and penalty. The order of the Tribunal, being bereft of reasons, it is submitted, is liable to be set aside.

6. Per contra, learned counsel appearing for the first respondent reiterated his submissions as advanced before the Tribunal and submitted that the Tribunal, taking into consideration all the facts and circumstances of the case as also the decision in Pandithurai's case (supra) has reduced the quantum of redemption fine and penalty and, therefore, no interference is called for with the order passed by the Tribunal.

7. Heard the learned counsel appearing for the appellant/Department and the learned counsel appearing for the assessee/respondent and perused the materials available on record.

8. Even a cursory perusal of the order passed by the Tribunal reveals that the Tribunal has relied on another decision of its own in Pandithurai's case (supra) for reducing the redemption fine and penalty. However, from the order of the Tribunal it is evident that the Tribunal has not discussed the applicability of Pandithurai's case to the facts of the present case for it to reduce the redemption fine and penalty. It is also not clear under what circumstances and what set of facts, fine and penalty were reduced in Pandithurai's case. Such a conduct of the Tribunal in passing an order mechanically without adverting to the facts of the said case but equating the same to the present case is highly deplorable. Equally

deplorable is the conduct of the Department in not producing before us the decision of Pandithurai's case, viz., Final Order No.325/08 dated 30.3.09 passed by the Tribunal.

9. In any event, we do not approve of the Tribunal reducing the penalty or fine on the ratio laid down in another decision. Each case will have to be decided on its own merits and the ratio, if any, to be followed on the legal plea and not otherwise. It may be so that a particular decision could be taken into consideration, but no straight jacket formula can be adopted, on the basis of one decision, to reduce the quantum of fine or penalty in another case. If the facts in Pandithurai's case (supra) had been discussed by the Tribunal, probably it would have thrown much light on the decision arrived at in that case which would have prompted the Tribunal to reduce the quantum. As already pointed out above, the department has not placed the decision in Pandithurai's case (supra) before this Court and the Department counsel is also equally blank about the decision, which is staring on his face in the impugned order. In such circumstances, this Court is of the considered opinion that the matter has to be remanded to the Tribunal to consider the issue afresh and give a reasoned order insoar as fine and penalty is concerned.

10. Accordingly, this appeal is disposed of and the matter is remanded to the Tribunal and the Tribunal is requested to consider the issue afresh and decide the same at the earliest by giving a reasoned order. Consequently, connected miscellaneous petition is closed. However, in the circumstances of the case, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

GLN

To

1. Commissioner of Customs (Air)
Air Cargo Complex
Meenambakkam
Chennai 600 027.

2. Customs, Excise & Service
Tax Appellate Tribunal
South Zonal Bench
Shastri Bhavan Annexe
1st Floor, 26, Haddows Road
Chennai 600 006.

Copy To

The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to M/s.P.Mahaadevan, Advocate, S.R.No.33549

C.M.A. NO. 666 OF 2010

PA(CO)
CA(28/09/2015)