IN THE HIGH COURT OF JUDICATURE AT MADRAS

3.2.2017

Coram:

The Hon'ble Mr.Justice HULUVADI G.RAMESH
and
The Hon'ble Dr. Justice ANITA SUMANTH

C.M.A.No.2713 of 2016
and
C.M.P.No.19547 of 2016

M/s.Manohar Enterprises,
rep. by its Partner Mr.B.Rejimon
Old No.86, New No.64,
Second Floor, Armenian Street,
Chennai 600 001. Appellant

Versus

The Commissioner of Customs
(Sea Port-Export)
Custom House, No.60, Rajaji Salai,
Chennai 600 001. Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 130 of Customs Act, 1962 against the Final Order No.40349 of 2015 dated 23.3.2015 in Appeal No.C.94/2010, on the file of the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), South Zonal Bench, Chennai 600 006.

For Appellant : Mr.A.Mohamed Ismail
For respondent : Mr.S.Rajasekar,
Junior Panel Counsel

JUDGMENT

(Judgment of the court was made by HULUVADI G.RAMESH, J.)

This Civil Miscellaneous Appeal is filed by M/s.Manohar Enterprises against the order of the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) against the Final Order No.40349 of 2015 dated 23.3.2015 in Appeal No.C.94/2010.

2. It appears that by way of export, alongwith Onion, some Ketamine Hydrochloride, to the tune of Rs.70,00,000/- were said to have been consigned and they were confiscated by the Customs authorities and as against the employee of the Concern, a criminal case was booked as per the provisions of the Customs

Act and a show cause notice was said to have been issued and thereafter, penalty was imposed to the tune of Rs.10,00,000/-. In the appeal before the CESTAT, the amount of penalty has been reduced to Rs.1,00,000/-. The penalty appears to have been imposed for contravention of the provisions of Section 117 of the Customs Act, which is, now, under challenge.

3. The stand of the appellant is that the appellant is a Partnership Concern and for the fault of the employee, the Firm shall not be penalised and the appellant also has no animus and accordingly, sought to contend that the reduced amount of penalty viz., Rs.1,00,000/- is also beyond the power vested as per the provisions of Section 117 of the Customs Act.

4. Therefore, it is apt to extract section 117 of the Customs Act, 1962:-

> "Penalties for contravention, etc., not expressly mentioned. - Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding one lakh rupees."

5. A plain reading of Section 117 of the Customs Act would make it clear that as per the statutory provision, proper penalty alone is imposed, by reducing it from Rs.10,00,000/- to Rs.1,00,000/-. The said provision provides for imposing of such penalty if a person contravenes any provision or abets any such contravention. In the case on hand, smuggling was detected and therefore, the goods were confiscated under Section 113 of the Customs Act and penalty is imposed under Section 117 of the Customs Act. The appellant, a partnership firm, cannot plead that they do not have personal knowledge and individual liability cannot be fixed, when the banned drug viz., Ketamine Hydrochloride, to the tune of Rs.70,00,000/- was found to have been concealed alongwith Onion. In that view of the matter, the order of the CESTAT is on line.

6. The learned counsel appearing for the appellant relied upon a judgment of this court in COMMISSIONER OF CUSTOMS (EXPORTS), CHENNAI v. I.SAHAYA EDIN PRABHU (2015 (320) ELT 264) to contend that the appellant cannot be penalized under the provisions of the Customs Act, 1962 for their failure to discharge their functions.

7. In the case on hand, the quantum of the contraband sought to be exported alongwith onion clearly reveals the animus to export the contraband by way of smuggling and it is a clear

violation of section 117 of the Customs Act. As such, we do not find any error committed by the respondent authorities in imposing the penalty. However, having regard to the provisions of the Customs Act, the Tribunal has rightly reduced the penalty to Rs.1,00,000/-. Therefore, we are not inclined to interfere with the same. In that view of the matter, the civil miscellaneous appeal is dismissed. No costs. The connected miscellaneous petition is also dismissed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

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

+1 CC to Mr. S. Rajasekar, Advocate sr 6890
+1 CC to M/s. A. Mohammed Ismail, Advocate sr 6902

C.M.A.No.2713 of 2016

KJ(CO)
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