IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.02.2017

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE Dr.JUSTICE ANITA SUMANTH

C.M.A.No.2541 of 2010

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

Vs

M/s.Vamsee Overseas Marine Pvt.Limited
A-10, 2nd Avenue
Anna Nagar,
Chennai-600 102 ..Respondent/Appellant

Civil Miscellaneous Appeal filed under Section 130 of Customs Act, 1962, seeking to set aside the Final Order No.1661/2009 dated 10.11.2009 passed by the CESTAT, Chennai.

For Appellant : Mr.V.Sundareswaran

For Respondent : Mr.S.Murugappan

JUDGMENT

(Delivered by Dr.ANITA SUMANTH,J.)

This Civil Miscellaneous Appeal is filed at the instance of the Revenue raising the following substantial questions of law:-

> '1. Whether the tribunal was justified in setting aside the order of confiscation imposed for contravening S.111(f) of the Customs Act when the import general manifest filed by the importer in terms of Section 30 of the Customs Act is incorrect and false and the same has been filed by suppressing the material facts.
>
> 2. Whether the tribunal was justified in setting aside the order of Confiscation imposed for contravening

S.111(j) of the Customs Act when the importer has removed the goods on the strength of an improper permission obtained by suppressing material facts and without payment of duty.

3. Whether the tribunal was justified in setting aside the order imposition of penalty u/s.112(a) when the importer has actually contravened S.111 of the customs act and had made their goods liable for confiscation.'

2. The brief facts in issue are as follows:

[a] The assessee/respondent had been commissioned to charter a tug and two barges from Mongolia for use in the Sethusamudram Project. The IGM, filed on 12.03.2008, reflected the same as 'ballast' and duty was duly remitted in terms of the Customs Act, 1962 (hereinafter referred to as 'Act') in respect of the stores on board. The Sethusamudram project was however, frustrated. As a result, the two barges were sold and duty duly remitted.

[b] Permission was sought and granted for moving the tug from chennai to vizag for repairs. Subsequent to the coastal run, duty was remitted on the tug on 14.10.2008.

[c] A show cause notice was issued on 16.10.2008 in terms of section 124 of the Act proposing to confiscate the tug in terms of sections 111(f) and 111(j) of the Act. The assessee was also called upon to show cause as to why penalty not be imposed in terms of section 112(a) and why the duty amount already paid not be appropriated against the aforesaid liability.

[d] An order-in-original was passed on 12.03.2009, confirming the proposals in the show cause notice and ordering confiscation of the tug 'Vamsee III', or alternatively permitting redemption thereof upon payment of fine of an amount of Rs.1,00,00,000/-. Penalty of an amount of Rs.50,00,000/- was imposed in terms of section 112(a) of the Act.

3. The appeal of the assessee before the Customs, Excise and Service Tax Appellate Tribunal (in short, 'CESTAT') was allowed after noting the relevant facts. The CESTAT notices as a fact that prior permission had been obtained by the customs department for the coastal run bringing the tug from Chennai to Vizag. The department was thus in full knowledge of all facts relating to the transaction and this was not a case of supplying false information or suppression/mis-declaration of relevant facts.

4. The provisions of sections 111(j) and 111(f) of the Act are extracted below:-

> '111. Confiscation of improperly imported goods, etc. - The following goods brought from a place outside India shall be liable to confiscation:-
>
> ......
>
> (f) any dutiable or prohibited goods required to be mentioned under the regulations in an import manifest or import report which are not so mentioned;
>
> ......
>
> (j) any dutiable or prohibited goods removed or attempted to be removed from a customs area or a warehouse without the permission of the proper officer or contrary to the terms of such permission;

5. The provisions of clauses (f) and (j) of section 111 of the Act, providing for confiscation apply only in the case of violations specifically mentioned therein. In the present case, we agree with the findings of the CESTAT that the provisions of 111(f) and 111(j) would not stand attracted insofar as there is no contravention of the stipulations contained therein.

6. The facts and circumstances of the transaction before us are not in dispute. Insofar as the purpose of the import was clearly stated as being for use in the proposed 'Sethusamudram Project' which stood frustrated, the bonafides of the transaction is not in dispute.

7. Though the thrust of the substantial questions raised for adjudication as well as the arguments of Mr.V.Sundareswaran, learned counsel appearing for the Revenue allege suppression of facts by the assessee, no material has been brought on record at any stage in this regard. All facts and circumstances relating to the matter were well within the domain of knowledge of the department at every stage of the transaction.

8. In view of the above discussion, the substantial questions of law are answered in favour of the assessee and the Department Appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

nvsri/sl

To

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

2.The Customs, Excise and Service Tax Appellate Tribunal,
South Zonal Bench,
Shastri Bhawan, Annexe, 1st floor,
26, Haddows Road, Chennai-600 006

+1cc to Mr.S.Murugappan, Advocate, S.R.No.6539
+1cc to Mr.V.Sundareswaran, Advocate, S.R.No.6599

C.M.A.No.2541 of 2010

VGII(CO)
GN(27/09/2017)