

ORDER RESERVED ON :10.3.2017

ORDER DELIVERED ON:.28.3.2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2017

CORAM

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER

AND

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

C.M.A.No.3652 of 2008 and
M.P.No.1 of 2008

D.V.Kishore

.... Appellant

vs

1. The Commissioner of Customs
(Seaports - Imports),
Customs House
Chennai - 600 001.

2. The Customs, Excise and Service Tax
Appellate Tribunal
South Zonal Bench
Haddows Road, Shastri Bhawan,
Chennai - 600 006.
Rep. By its Registrar.

.... Respondents

Prayer : The appeal filed under Section 130(1) of the Customs Act, 1962, against the order of the second respondent, The Customs, Excise and Service Tax Appellate Tribunal, Chennai, vide its Final Order No.1410 of 2007 in C/Appeal No.99 of 2003 dated 28.11.2007, dismissing the appeal filed by the appellant and by upholding the order of the first respondent.

For Appellant : Mr.B.SathishSundar

For Respondents: Mr.Rabu Manohar
Standing Counsel

JUDGEMENT

(Judgment of the Court was delivered by R.SURESH KUMAR, J.)

This civil miscellaneous appeal is directed against the order passed by the Customs, Excise and Service Tax Appellate Tribunal (in short Tribunal) by order dated 28.11.2007 made in Order No.1410/2007.

2. The appellant had been suffered with an order of penalty at the hands of the first respondent by his order dated 10.01.2003 i.e., order in original No.31/2003, whereby, the first respondent has imposed a penalty of Rs.10 lakhs on the appellant under Section 112 (a) and (b) of the Customs Act, 1962 (in short Act) and also confiscating a sum of Rs.1,43,452/- under Section 111 (d) (l) and (m) of the Act and also confiscation of cell phone worth about Rs.6000/- under Section 111 (d) and (m) of the Act.

3. Assailing the said order of the first respondent, the appellant had approached the Tribunal. In the said appeal, where the present impugned order was passed, the order of the first respondent has been confirmed and the appeal was dismissed. As against which, the present Civil Miscellaneous Appeal has been preferred before this Court.

4. The present appeal had been admitted by this Court on 29.6.2010 with the following question of law:

"1. Whether the first respondent authority and the second respondent Tribunal is correct in holding that the charges of Section 112(a) & (b) of Customs Act, 1962 is made out in the facts and circumstances of the case against the appellant, warranting imposition of penalty of Rs.10 lakhs ?

2. Is the 2nd respondent tribunal right in attaching importance to the alleged confessional statement of the appellant, especially when the same has been retracted at the earliest point of time and such confessional statement have not been corroborated by any independent evidence."

5. The appellant, who had been the second officer of the vessel, MV-Tiger Bridge, had been arrested by the Customs authorities on 13.6.2001 and on the next day i.e., on 14.6.2001, the customs authorities obtained a confessional statement from the appellant under Section 108 of the Act. Based on the confessional statement of the appellant as well as the similar confessional statements obtained from other co-accused, the customs authorities through the first respondent had initiated the adjudication proceedings and upon adjudicating the issue, the ultimate penalty had been imposed against the appellant.

6. The case of the respondents / customs authorities, insofar as this appellant is concerned, is that on 13.06.2001 at about 4 pm, police officials intercepted a Mahindra Jeep with Registration No. TN-02-C-4979 near Chennai harbour and recovered

900 numbers of gold biscuits bearing foreign markings concealed in a specially made cavity in the said jeep. The police subsequently, arrested one Sadasivam and jeep driver Ganesan and on further enquiry, the police arrested three more persons, namely Rajam Patil, Abdul Nabi and Saleem. Thereafter, on the basis of disclosure made by the said Sadasivam, the appellant also was apprehended by the police with the help of customs officials on 13.06.2001 at Chennai harbour. The officials recovered and seized an Ericsson cell phone and US \$ 2100 from the appellant under a mahazar.

7. On 14.06.2001, all the six accused persons including the appellant, who had been arrested on 13.06.2001, were produced before the Additional Chief Metropolitan Magistrate, Economic Offences-1, Egmore and they had been remanded to judicial custody. Alongside, a petition was filed by the Customs Department before the same Magisterial court seeking the custody of the six accused persons including the appellant and on getting orders from the Court, the Customs Department under their custody started interrogations and recording the statements from the six persons including the appellant till 19.06.2001.

8. According to the customs authorities, all the six persons had given confessional statements and each of the statements corroborating with each other and on the basis of the said statements, the Customs Department had made out a case stating that all the six persons, under a conspiracy, had involved in smuggling of gold in order to escape from paying customs duty, knowing fully well that their action being in violation of the law of this land and they would be liable to be punished for the same.

9. Based on the said statements and other circumstantial evidences, the first respondent/Adjudicating Officer has not only confiscated the contraband as well as the conveyances used for the smuggling but also imposed penalty on all these persons including the appellant.

10. Insofar as the alleged involvement of the appellant is concerned, the Adjudicating Officer had mainly relied upon the confessional statement given by the appellant dated 14.06.2001 and only based on such statement, which, according to the customs authorities, had been corroborating with other similar confessional statements given by other accused, the order of confiscation as well as penalty was passed.

11. Even though, the appellant had retracted the said confessional statement, said to have been given by him on 14.6.2001, at the earliest point of time, i.e. immediately, after being taken into judicial custody, the said retraction on

the part of the appellant had not been taken into account by the Adjudicating Officer as he rejected the said retraction saying that it is an after thought on the part of the appellant.

12. Therefore, assailing the said order passed by the first respondent imposing penalty as well as confiscation of money and goods belonging to the appellant, he had approached the Tribunal by way of appeal.

13. The Tribunal also, in the order impugned, having taken into account only the findings given by the Adjudicating Officer, who passed the order in original, especially, on the basis of the confessional statement given by the appellant and other corroborating statements given by other persons involved in the activity of smuggling, ultimately, confirmed the order in original by dismissing the appeal of the appellant.

14.a. Mr.B.SathishSundar, the learned counsel appearing for the appellant has taken us to the exhaustive recording of the confessional statement given by the appellant on 14.06.2001 by the Adjudicating Officer which is reflected at paragraph 18 of the order in original.

14.b. The learned counsel would vehemently contend that the said confessional statement given by the appellant under Section 108 of the Act since has been retracted at the earliest point of time, the veracity of the said contents made in the said confessional statement given by the appellant would not have any impact in arriving at a conclusion fixing up the involvement of the appellant in the alleged activity of smuggling.

14.c. The learned counsel would further submit that it is a settled proposition of law that the confessional statement given before the customs authorities during their custody cannot have any evidentiary value once the same is retracted at the earliest point of time by the person concerned. When that being the position, the first respondent merely relying upon the confessional statement given by the appellant had concluded that the appellant also has got a role to play in the alleged activity of smuggling and thereby, imposed a heavy penalty of Rs.10 lakhs on the appellant besides confiscation of his personal belongings.

14.d. The learned counsel for the appellant would also submit that parallely, criminal case also was filed in EOCC No.294 of 2001 on the said act of alleged smuggling.

14.e. Before the Trial Court, seven out of eight accused, except the appellant had admitted their guilt. In the result, the Trial Court by Judgment dated 03.03.2006, after having separated the case of the appellant alone, had convicted all

other seven persons. The case of the appellant was split up and was tried separately in C.C.No.37 of 2006 and by Judgment dated 22&24.6.2011, the trial Court convicted the appellant also by imposing a fine of Rs. 10,000/- for each of the three offences u/s 120-B IPC r/w 135 (1)(a)(i) and 135 (1)(b)(i) of Customs Act 1962, u/s 135 (1) (a) r/w 135 (1) (a) (i) of Customs Act 1962 and u/s 135 (1)(b) r/w 135 (1)(b)(i) of the Customs Act 1962, in default to undergo six months SI for each of the three offences and also convicted and sentenced to undergo RI for 10 months for each of the three offences.

14.f. As against the said Judgment of the Trial Court, the appellant had filed appeal before the Principal Sessions Judge, Chennai in CrI.A.No.135 of 2011. In the said appeal, after appreciating the case of the prosecution as well as the defence, the learned Sessions Judge by order dated 23.6.2016 has acquitted the appellant from the charges by reversing the conviction and sentence passed by the Trial Court. The learned Sessions Judge has found that the prosecution had failed to prove the case beyond reasonable doubt and therefore, the benefit of doubt should be extended to the appellant and accordingly, he was acquitted from the charges.

14.g. In this regard, the learned counsel appearing for the appellant would further contend that in view of the said acquittal having been made by the Sessions Court in the criminal case against the appellant for the same occurrence and on same set of facts, the adjudication order in original as confirmed by the Tribunal, through the impugned order, cannot stand.

14.h. In support of his contentions, the learned counsel for the appellant would rely upon the following decision of the Hon'ble Supreme Court of India in 2004 176 ELT 3 (S.C) in the matter of GopalDas Udhavdas Ahuja Vs Union of India. The learned counsel, in the said Judgment, would rely upon paragraph 20 of the order which reads thus:

"20. In the case of Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. reported in (1999) 3 SCC 679) it has been held that where departmental and criminal proceedings are based on identical facts and where charges were sought to be proved by the police officers and the panchas who raided the house and effected recovery and where same set of witnesses were examined in both the proceedings but the criminal court on examination of the evidence came to the conclusion that no recovery was made from the house and that raid was not proved it would be unjust, unfair and oppressive to allow the findings recorded by the enquiry officer to

stand against acquittal by judicial pronouncement. The present case is on the stronger footing than the case of Capt. M. Paul Anthony (supra). In the present case, in view of Section 98B, a very heavy burden was placed on the appellants in the criminal proceedings. It was for the appellants to rebut the statutory presumption of the culpable mental state placed on them by section 98B. Under section 98B, the appellants had to prove beyond reasonable doubt, which they did, that they had no knowledge of the gold hidden in the ornamental top of the cupboard in the eastern bedroom. Hence, it would be unjust, unfair and oppressive to allow the decision of the Authorised Officer in confiscation proceedings to stand against acquittal by the competent criminal court, which acquittal was confirmed by the High Court and by this court."

14.i. The learned counsel would also rely upon the very same Tribunal's order reported in 2006 202 ELT 365, in the matter of S.Duraiappa Vs. Commissioner of Customs, Chennai. In the said order of the Tribunal, the learned counsel would rely upon para 10.3 and 10.4 which reads thus:

10.3 We have found that the offence charged against the appellants in both the adjudication and prosecution proceedings is substantially the same. Both the cases are based on the same set of facts. The evidence considered by the adjudicating authority and the criminal court is, by and large, the same. After appreciation the evidence, the criminal court acquitted the accused after finding that the charge against them had not been proved. In the circumstance, we are of the view that the judicial approach taken in Paul Anthony's and Gopaldas's cases can be applied to this case and accordingly the order passed by the adjudicating authority imposing penalties on the appellants cannot stand in the face of their acquittal by the criminal court.

10.4 We have also examined the case law cited by Id. SDR. Some of the decisions

(by High Courts) cited by Id. SDR (vide K.P. Abdul Majeed, V.J.A. Flynn, etc) are to the effect that adjudication and criminal proceedings are independent of each other and that the degree of evidence required by the adjudication authority for imposing penalty is much less than that required by criminal court for convicting the accused. There is no quarrel about this legal position, which has been upheld by the Apex Court also. However, as we have already noted, the view taken consistently by the Apex Court is that, notwithstanding the fact that adjudication and criminal proceedings are independent, any order of confiscation and penalty resulting from adjudication cannot be allowed to stand in the face of an order of acquittal passed by the criminal court on the same set of facts and evidence. When this ruling of the Apex Court is applied to the present case, we have no option but to set aside the penalties. None of the appellants has challenged the confiscation order. Their challenge is only against the penalties. Hence we set aside the penalties imposed on the appellants by the Commissioner. The appeals are allowed."

14.j. In this aspect, the learned counsel for the appellant would submit that once if a person is acquitted in a criminal case and on the same set of facts and circumstances, if a departmental adjudication has taken place certainly, such adjudication upon the very same set of facts and evidences cannot stand in the legal scrutiny as the very court who dealt with the criminal case since has acquitted the person concerned, based on a higher standard of proof. The learned counsel for the appellant would lay emphasis on the findings given by the Hon'ble Apex Court in the Judgment reported in 2004 176 ELT 3 (S.C) (cited supra) to state that it would be unjust, unfair and oppressive to allow a decision of a authorised officer in confiscation proceedings to stand against acquittal by the competent criminal Court.

14.k. Therefore, the learned counsel for the appellant would ultimately, contend that the very order in original passed by the first respondent, is solely on the basis of the confessional statement given by the appellant under their custody. Apart from that since the department/prosecution has not proved their case

against the appellant, as has been found out by the criminal court, certainly, the order in original as confirmed by the Tribunal, through the impugned order, shall not stand in the legal scrutiny, therefore, the substantial questions of law framed in this appeal may be answered in favour of the appellant.

15.a. Per contra, Mr.Rabu Manohar, the Standing Counsel appearing for the first respondent would contend that it is not merely on the basis of the confessional statement given by the appellant the order in original was passed by the first respondent. All the six persons, including the appellant who had been arrested on 13.6.2001, had given such confessional statements before the customs authorities on 14.6.2001 and 15.6.2001. Each one of them had given separate and independent statement under Section 108 of the Act and when the department peruse each of the statements given by them, it would corroborate with each other by thus, the conspiracy hatched and executed by them through their co-ordinated action and effort have been proved.

15.b. The learned counsel for the respondent would also submit that the corroborative statements given by each of the accused including the appellant had not been controverted by them, at the time of giving such statements and i.e., the reason why all the accused, except the appellant had admitted their guilt before the Criminal Court (Trial Court) and ultimately, had been convicted.

15.c. Even though the appellant had retracted the said confessional statement subsequently, the same cannot be considered to be a worthy statement on the part of the appellant because the confessional statements given by the appellant also, had a corroborating effect with the statements given by other accused, thereby, the theory of conspiracy projected by the prosecution/Adjudication side had been proved.

15.d. There is no alternative theory projected by the appellant because he is the lone person, who not only retracted the statement of confession, but also had not pleaded guilty before the trial Court to show that the appellant was innocent and had no connection whatsoever with the said incident of smuggling.

15.e. In a case of this nature, where conspiracy was hatched, as without which this kind of smuggling activities could not be executed, it is only on the basis of corroborating evidences as well as circumstantial evidences, either the prosecution or the Adjudicating Authority can build their case. Here in the case on hand, the entire conspiracy since had been proved beyond doubt before the criminal Court as all of them

except the appellant had pleaded guilty, it cannot be said that the conspiracy had not been proved.

15.f. The learned counsel for the respondent would also submit that merely, the appellant alone has retracted his confessional statement subsequently, he cannot be excluded from the clutches of the conspiracy hatched by the parties, because a proven conspiracy definitely has got links with the appellant and this can be very well appreciated if the circumstantial evidences are taken into account. Therefore, the learned counsel for the respondent would submit that, absolutely, there is no infirmity in the order in original passed by the first respondent as confirmed by the Tribunal in the order impugned and therefore, the questions of law framed in this appeal have to be decided against the appellant and in favour of the respondents.

16. This Court has given its anxious consideration to the said rival submissions made by both sides as well as the documents filed before this Court for our perusal.

17. The first respondent in the order in original dated 10.01.2003, has given his findings from paragraph 56 to 71. In his findings, the first respondent has mainly relied upon the confessional statements given by these accused persons including the appellant. At paragraph 57 of the order in original, the first respondent has stated that "while going through the statements given before the customs officer all the above mentioned persons had corroborated the statements given by one another and all of them admitted having committed this offence."

18. At paragraph 60 of the order in original, the first respondent by relying upon the confessional statement given by the appellant has stated that that "appellant, an officer holding a senior position in the vessel was acting as a mediator by contacting Shri. Sadasivam every time on arrival and intimating of the arrival of gold, which were brought on board by all the three of them by concealing the gold in the cloth belt and wearing them on person". To give such a finding against the appellant, the first respondent has relied upon only the confessional statements given by the appellant and other accused persons. There is no other evidence directly attributing the link or involvement of the appellant in the said alleged conspiracy out of which only, the said action of smuggling had taken place.

19. The first respondent, at paragraph 62 of the order in original, had rejected the retraction statements given by these accused people by stating that their retraction at a later stage is only a mere after thought to escape from the clutches of law and as such they cannot be given any credence. At paragraph 67 of the order in original, the first respondent has specifically,

rejected the retracted statement given by the appellant as an after thought and it was stated by the first respondent that the appellant's involvement had been corroborated by his statement and statements of other co-accused.

20. No where, it is the case of the respondent that the contraband had been seized from the appellant nor it is the case of the authorities that the contraband had been in possession of the appellant. If at all, any link is to be given with the appellant, even according to the authorities, that is the one that the appellant allegedly contacted one of the persons in the team by giving intimation that the contraband has arrived to the port.

21. Insofar as the said issue of involvement on the part of the appellant in making an intimation to another person of the group is concerned, the Trial Appellate Court has taken it in very detail and given its findings in the Judgment dated 23.6.2016. Certain findings given by the Trial Appellate Court can be extracted here under for better appreciation of the issue. In this regard the following portions of the Trial Court Judgment are reproduced here under:

"19. PW-7 Mr. Paul Jesudass Superintendent of Customs who speaks about this had deposed in detail about the investigation of the case and recording the statements of the accused, inspection of the vehicle, which was seized with smuggled gold bars and other investigation procedures. In his evidence, he has stated that he has summoned to the service provides of Cellular Services requesting them to furnish the call details and their response and they are all marked as EX.P73 to P78. Based on these exhibits, he made a consolidated statement marked as Ex P-80 and P-81. He found that this appellant was in touch with A3 Rajan Patel, A7 Sathasivam, A1 Ganesan and A5 Saleem over phone. As per P.W.7, it is also revealed through his investigation that from the local PCO No. 6282346, which stands in the name of T.Stalin of Anna Nagar West, various calls were made to Ganesan, Ssaleem, Kishore and Sathasivam between 4.5.2001 and 12.6.2001. Particularly, to the cellphone No.9840077231 used by the appellant, calls were emanated from that PCO on 12.5.2001, 14.5.2001 and 16.5.2001. Several calls to four accused from the PCO during the relevant point of time, cannot be accidental

one, therefore the appellant is privy to the conspiracy.

20. Though the above submission of the prosecution has been accepted by the trial court, this court finds that the evidence let in by the prosecution in this regard lacks proof. The appellant in his confession says that he used the cellphone No.9840077231. The call details relied by the prosecution indicates only 3 calls emanated from that number to 98401 20330 on 13.06.2001 at 08.41 am, 12.29 pm. It is pertinent to note that as per the prosecution case as found in the seizure mahazar marked as Ex P-19, on 13.06.2001 at about 20.45 hours the Custom officers lead by Shri.Srinivasan, Intelligence Officer (P.W.3) went to the Harbour and enquired about the appellant with Mr. Bharadwaj, Chief Officer of the Vessel M.V.Tiger Bridge. He informed the customs officers that the appellant was on off duty till mid night and he has gone to shore. Thereafter at the request of the custom officers he contacted the appellant cell number 9840077231 and informed the appellant that two persons have come to harbour to see him and asked the appellant to return to harbour. In response to his request, the appellant reached the harbour at about 21.30 hours. If the prosecution version is true then the call purported to have been made by the Chief Officer Bharadwaj to appellant cell number 9840077231 should have find place in the call detail furnished by the skycell company.

21. Yet another glaring contradict touching upon this aspect is that the actual time of arrest and place of arrest. PW-1 is the person who has arrested the appellant. Ex P-14 is the arrest information. It shows the appellant was arrested near Reserve Bank on 13.06.2001 at 16.00 hrs. The arrest card marked as Ex P-17 shows the appellant was arrested at 23.30 hrs on the same day. Whereas the seizure mahazar Ex P-19 and the so called confession of the appellant marked as Ex P-20 say that the appellant was called over phone 13.06.2001 and in response to the

phone he came to the harbour at 21.30 hrs. In the light of the above fact, from their own document namely call details it is evident that no call was received by the phone No. 9840077231 on 13.06.2001 after 12.29 pm. That call detail information also not been vouchsafed by the author of the letter. It is only PW-7 superintendent of customs speaks for all the service providers. Above all the SIM card for phone number 9840077231 has conspicuously not recovered or marked besides one of the prosecution document Ex P-14 indicates the appellant was arrested on 13.06.2001 as early as 16.00 hrs long before the search of the vessel M.V.Tiger Bridge.

22. Since the prosecution has miserably failed to prove that the appellant was using the phone number 9840077231 and he was called over the phone on 13.06.2001 to the harbour and for search of his person and cabin, coupled with the contradiction found in the arrest information Ex P-14 and mahazar Ex P-19 regarding the time of arrest makes the prosecution evidence against this appellant unreliable.

23. On scrutiny of the evidences relied by the prosecution, this court finds that the trial court has missed to note that the prosecution has failed to produce the simcard bearing No. 9840077231 alleged to have been used by the appellant herein. Further, the trial court has missed to note that there was no call to that number after 12.29 p.m. On 13.6.2001, which falsified the version of the prosecution that the appellant was called through his cellphone No. 9840077231 to come to the Harbour, through the Chief Officer Bharadwaj on 13.6.2001 after 20.30 hours. The trial Court has also omitted to note that the prosecution version differs regarding the time of appellant's arrest. The reconciliation of that by P.W1 in this regard does not inspire confidence. When a charge of conspiracy is loaded against a person, the prosecution should establish the chain of events without any break. While relying upon circumstantial evidence, when

there was no recovery of gold from the appellant, but solely harping on the so called telephonic conversation held between the appellant and the other accused is not sufficient to hold the appellant guilty. Further more, in the light of the fact that neither the ownership nor the existence of the simcard is proved by the prosecution in the manner known."

22. After appreciating the evidences and the failure on the part of the prosecution in proving their case beyond reasonable doubt i.e., proving the link of the appellant with the team to have hatched the conspiracy and executed the smuggling activity, the Trial Appellate Court has given an acquittal to the appellant by stating that the prosecution has failed to prove the case beyond reasonable doubt.

23. Once the criminal prosecution has failed to prove the case against an accused person beyond reasonable doubt and based on which if an accused person has been acquitted, on the same set of facts and circumstances whether the person's guilt can be proved in the departmental enquiry/adjudication process, has been infact answered by the Hon'ble Apex Court in the Judgment cited supra, as has been relied upon by the learned counsel for the appellant in 2004 176 ELT 3 (S.C). The law has been laid down so, in the said Judgment, following the earlier Judgments of the Hon'ble Apex Court including the one reported in (1999) 3 SCC 679 in the matter of Capt. M.Paul Anthony V. Bharat Gold Mines Ltd., where also departmental and criminal proceedings were based on identical facts and the criminal proceedings ended in acquittal, hence it was held that it would be unjust, unfair and oppressive to allow the decision of the Authorised Officer in confiscation proceedings to stand against acquittal.

24. We are of the considered view that in this case also since the appellant has been acquitted from the criminal charges by the competent Trial Appellate Court, in the criminal proceedings, that too on the basis of the failure on the part of the prosecution to prove the case beyond reasonable doubt, allowing the findings of the Adjudicating Officer and his order in original as confirmed by the Tribunal, is nothing but unjust, unfair and in fact oppressive, in the words of Hon'ble Apex Court.

25. These aspects had not at all been considered by the Tribunal in the impugned Judgment, where, the Tribunal has merely stated that the said Sadasivam in his deposition explained the principal role played by the appellant, (D.V.Kishore) in transporting the contraband for a consideration. In this regard, we are of the view that these

charges against the appellant specifically had not been proved by the prosecution, before the criminal Court. When that being so, merely on the basis of the confessional statement, even though the same has been retracted at the earliest point of time by the appellant, the Adjudicating Officer has reached his conclusion in the order in original. Therefore, the same ought not to have been confirmed by the Tribunal without any plausible or cogent reasons.

26. It is also the findings on the part of the Tribunal to state that there was no effective and reliable denial on the part played by the appellant either in the proceedings before the Commissioner or before the Tribunal.

27. In fact, the appellant had started retracting his statement of confession itself from the beginning and when that being so, such a finding as has been given by the Tribunal, would not stand in the legal scrutiny. The further reasons given by the Tribunal is that, even though the only defence apparently was that the statements had been retracted, the seizure of Gold and the consensual deposition by other witnesses implicating the appellant and therefore, the same cannot be ignored.

28. Merely, because the other persons had pleaded guilty before the Trial Court and accepted the punishment, that would not have a bearing on the appellant's position, as there is no direct evidence that he had involved in the said activity of smuggling as there was no recovery from the appellant and also the prosecution, as has been rightly found out by the Trial Appellate Court has not proved the case against the appellant beyond reasonable doubt. Hence, we feel that the Tribunal has erred in giving such a conclusion, confirming the order in original.

29. In view of the said facts and circumstances, as well as the law, which has been settled in this regard, we appreciate the questions of law as has been framed at the time of admission of this appeal to be answered in favour of the appellant. Accordingly, the questions of law are answered in favour of the appellant and in view of the same, we allow this appeal by setting aside the order which is impugned herein. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

To

1. The Commissioner of Customs
(Seaports - Imports),
Customs House
Chennai - 600 001.

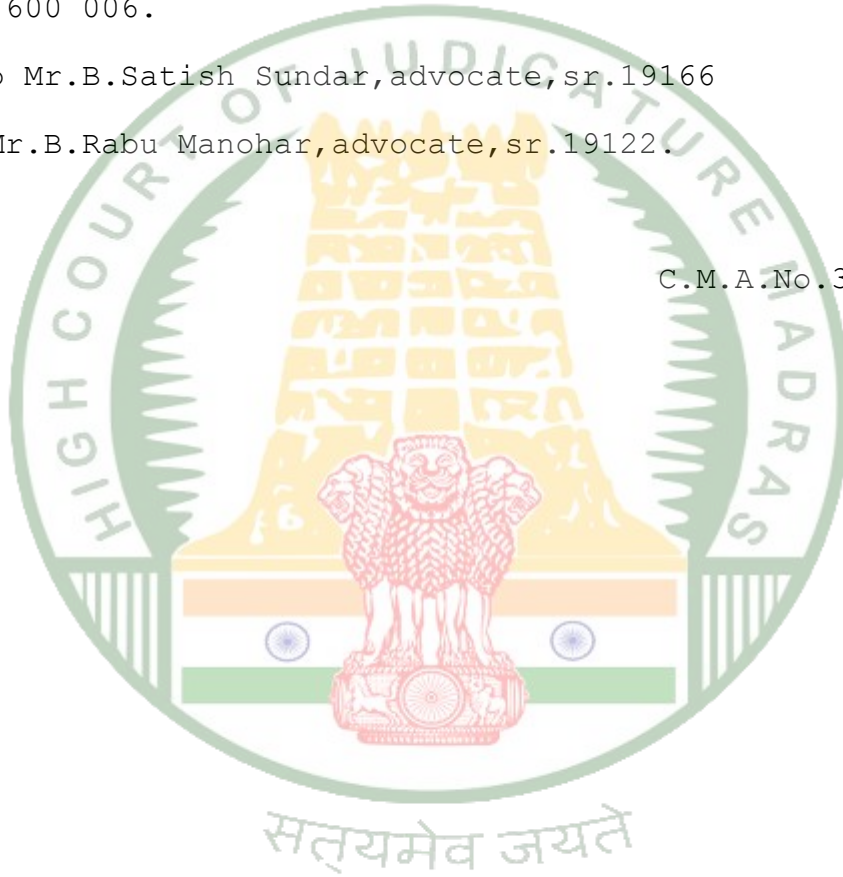
2. The Customs, Excise and Service Tax
Appellate Tribunal
South Zonal Bench
Haddows Road, Shastri Bhawan,
Chennai - 600 006.

+2 cc's to Mr.B.Satish Sundar,advocate,sr.19166

+1 cc to Mr.B.Rabu Manohar,advocate,sr.19122.

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krd 10/4

C.M.A.No.3652 of 2008



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