BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A.[MD].No.576 of 2016
and
C.M.P.(MD)No.6688 of 2016

M/s.Villavarayar & Sons,
No.39, Emperor Street,
Tuticorin-628 001. : Appellant/Appellant

Vs.

1.The Commissioner of Customs,
Custom House, Tuticorin-628 004. :1st Respondent/Respondent

2.The Hon'ble Customs,
Excise & Service Tax Appellate Tribunal,
South Zonal Bench,
Haddows Road, Shastri Bhawan,
Chennai-600 006. : 2nd Respondent/Nil

PRAYER: Appeal is filed under Section 130 of the Customs Act, 1962, against the Final Order No.40670/2016, dated 21.04.2016 in Appeal No.C/40651/2015-SM passed by the second respondent.

For Appellant : Mr.Hari Radhakrishnan

For Respondents : Mr.S.Gurumoorthy

J U D G M E N T

[Judgment of the Court was delivered by R.SUBBIAH, J.]

This Civil Miscellaneous Appeal is directed against the Final Order No.40670/2016, dated 21.04.2016 in Appeal No.C/40651/2015-SM passed by the second respondent.

2. The appellant herein filed shipping bills on behalf of the exporter M/s.Seshasayee Paper & Boards Limited to export (a) plain paper (b) copier paper (c) colour printing paper (d) kraft paper (e) M.G. poster paper and (f) maplitho paper under claim for drawback. The rate of drawback for the plain paper and copier paper was 4.4% and for the rest of the paper, it was 2.4%. However, by mistake, the rate of drawback was mentioned as 4.4% as

against the correct rate of 2.4% applicable to the MG poster paper exported. The Department also sanctioned the amount as classified without noticing the excess rate of drawback mentioned in the shipping bill. The exporters, on their own, noticed the mistake of claiming excess rate of drawback and informed the appellant. The appellant, in turn, by his letter dated 18.07.2013, informed the department of the above said fact and remitted the excess amount along with interest.

3. The Assistant Commissioner of Customs (SIIB), Tuticorin, treating the error committed by the appellant as an offence punishable under Section 114AA of the Customs Act, 1962, issued a show cause notice dated 26.09.2013 to the exporters and to the appellant. The show cause notice demanded payment of Rs.3,71,703/- under Section 28 of the Customs Act, 1962 and proposed to appropriate the amount of Rs.4,02,642/- already paid towards the amount demanded and to impose penalty on the exporters under Section 114(iii) of the Customs Act, 1962 and on the appellant under Section 114AA. The Additional Commissioner, as per order-in-original No.20/2014, dated 23.09.2014, imposed a penalty of Rs.10,000/- on the exporter and Rs.50,000/- on the appellant after a lapse of one year from the date of issuance of show cause notice. Aggrieved by the imposition of penalty, the appellant filed an appeal before the Commissioner of Customs (Appeals). The Commissioner of Customs (Appeals) has reduced the penalty from Rs.50,000/- to Rs.25,000/-. Aggrieved against the same, an appeal was filed before the second respondent. The second respondent, vide order dated 21.04.2016, in Final Order No.40670/2016, dismissed the appeal on the ground that the penalty involved in the case was only Rs.25,000/-. Aggrieved over the said order, the present appeal has been laid.

4. The learned counsel for the appellant submitted that the appeal was dismissed by the second respondent only on the ground that since the penalty is only for a small amount of Rs.25,000/-, the appeal is dismissed on the pecuniary jurisdiction. The exact order passed by the second respondent Tribunal reads as follows:

> **"The appeal being for a small amount of Rs.25,000/- (Rupees Twenty Five Thousands only) and Revenue has made a policy not to seek appeal remedy upto an amount of Rs.10,00,000/- (Rupees Ten Lakhs only) of demand, this appeal is dismissed on pecuniary jurisdiction."**

5. Assailing the order passed by the second respondent Tribunal, the learned counsel for the appellant contended that since the Revenue has taken a policy decision not to seek appeal remedy upto Rs.10,00,000/-, it does not mean that the appeal filed by the appellant herein, who is a Customs Broker licensed by the first respondent under the provisions of the Customs Brokers Licensing Regulations, 2013, is liable to be dismissed, that too,

at the stage of admission itself. It is further contended that though the amount is being less, the payment of penalty amount will have a bearing on the renewal of licence. When that being the position, the Tribunal ought to have entertained the appeal.

6. Per contra, the learned counsel for the respondents made a submission that the appeal was dismissed by the second respondent only in accordance with the second proviso to Section 129A(1) of the Customs Act, 1962. Therefore, absolutely, there is no infirmity in the order passed by the second respondent.

7. Irrespective of the submissions made by the learned counsel on either side, this Court is of the view that when payment of penalty has a bearing on the renewal of licence, the second respondent ought to have entertained the appeal and disposed it of on merits. Therefore, without going into the merits of the claim made by the appellant, this Court sets aside the order dated 21.04.2016 and the matter is remitted to the second respondent for fresh consideration. The second respondent is directed to entertain the appeal and dispose of the same on merits and in accordance with law, as early as possible.

8. The Appeal is allowed accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(Writs)

/True copy/

Sub Assistant Registrar

To
1.The Commissioner of Customs,
Custom House, Tuticorin-628 004. :1st Respondent/Respondent

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

+1cc to Mr.Hari Ramakrishnan, Advocate SR.No.2401
+1cc to Mr.S.Gurumoorthy, Advocate Sr.No.2196

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Judgment made in
C.M.A.[MD].No.576 of 2016