BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **04.10.2019**

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE Mrs.JUSTICE R.THARANI

C.M.A.(MD).Nos.1189 and 1190 of 2010

The Commissioner of Customs
Customs House,
New Harbour Estate,
Tuticorin-628 004. ... Appellant/Respondent in both C.M.As

Vs.

1.Sri.M.Natarajan
M/s.Sri.Olima International
985-A, T.N.H.B., Colony,
Tuticorin-628 004. ... Respondent/Appellant in C.M.A.(MD).No.1189/2010

2.Sri.CTR.Ramasamy,
69/5B/2A Thattankulam Road,
Uthangudi Post,
Madurai-625 017. ... Respondent/Appellant in C.M.A(MD).No.1190/2010

COMMON PRAYER: Civil Miscellaneous Appeals filed under Section 130 of the Customs Act, 1962, against the Final Order Nos.135 and 136 of 2010 dated 28.01.2010 passed by the Customs Excise and Service Tax Appellate Tribunal South Zonal Bench, Chennai.

For Appellant in both C.M.As : Mr.R.Nandakumar
For Respondent in C.M.A.(MD).No.1189/2010 : Mr.Abdul Saboorkhan
For Respondent in C.M.A.(MD).No.1190/2010 : Mr.S.Muthumalai Raja

COMMON JUDGMENT

[Judgment of this Court was delivered by **T.S.SIVAGNANAM, J.**]

Heard Mr.R.Nandakumar, learned counsel appearing for the appellant and Mr.Abdul Saboorkhan, and Mr.S.Muthumalai Raja, learned counsel appearing for the the respondents.

2.These appeals have been filed by the Revenue challenging the order passed by the Customs Excise and Service Tax Appellate Tribunal, Southern Zonal Bench, Chennai, in Final Order Nos.135 and 136 of 2010 dated 28.01.2010.

3.These appeals have been admitted on the following substantial questions of law,

> *"(1)Is not the shipping bill filed under Section 50 of Customs Act, a material record for the purpose of effecting confiscation under Section 113 of Customs Act?*
>
> *(2)Whether "mens rea" is necessary to impose penalty under Section 114 of Customs Act?*
>
> *(3)Whether the Tribunal was correct in holding that the provisions of Section 114 of the Customs Act are not attracted when the respondent mis-declared the goods in the Shipping Bill No.1692528 dated 22.12.2006 as Aluminium Sulphate and by giving a declaration to the truth of the contents under Section 50(2) of the Customs Act and obtained Let Export order for Aluminium Sulphate from the Customs Officer?*
>
> *(4)Whether the Tribunal was correct in approving the lending of IE Code by the respondent, when there is no specific provision under the relevant Act viz., Foreign Trade (Development and Regulation) Act, 1992 and Rules?"*

4.The Central Board of Indirect Taxes and Customs had issued circulars from time to time and the latest being the circular, dated 22.08.2019, which fixed the monetary limits for the Department to file appeals against the order of the Tribunal and *per se*, the appeal pending before this Court, subject to the condition, the monetary limit should be above Rs.1 crore. Earlier there was an instruction stipulating a lesser threshold amount, however, the instruction dated 22.08.2019 issued by the Central Board of Indirect Taxes and Customs (CBITC) is not only applicable to the fresh cases but also the pending cases. Thus, applying the said instruction, these appeals are dismissed as withdrawn and the substantial questions of law raises in these appeals are left open. No costs.

Sd/-

Assistant Registrar(CS-III)

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Sub Assistant Registrar(CS)

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To:

1.The Customs Excise and Service Tax
   Appellate Tribunal South Zonal Bench,
   Chennai.

2.The Commissioner of Customs
   Customs House,
   New Harbour Estate,
   Tuticorin-628 004.

C.M.A.(MD).Nos.1189 and 1190 of 2010
04.10.2019

DB(CO)
TR(21.11.2019) 3P 3C