IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2022

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THE HON'BLE MR.JUSTICE S. VAIDYANATHAN

AND

THE HON'BLE MR .JUSTICE C.SARAVANAN

C.M.A. No. 2217 of 2022

Mr.Thirumalai Thiagarajan ..Appellant

Vs.

The Commissioner of Customs,
Chennai II Comissionerate, No.60,
Rajaji Salai, Customs House,
Chennai – 600 001. ..Respondent

Prayer: Civil Miscellaneous Appeal as against the final order No.40053/2022 dated 04.02.2022 in Appeal No. C/40019/2020-SM passed by the Customs, Excise and Service Tax Appellate Tribunal at Chennai.

For Appellant :: Mr.N. Viswanathan

For Respondent :: M/s.Pramod Kumar Chopda
Avinash Wadhwani

J U D G M E N T

S. VAIDYANATHAN,J.

AND

C. SARAVANAN,J.

The appellant has filed this appeal as against the impugned order passed by Customs, Excise and Service Tax Appellate Tribunal vide final order No.40053/2022 dated 04.022.022 in Appeal No. C/40019/2020-SM.

2. By the impugned order, the Appellate Tribunal has partly allowed the appeal filed by the appellant by reducing the penalty undersection 112[a] of Customs Act, 1962. Earlier, the original authority namely, the Joint commissioner of Customs vide order dated 29.06.2018 in Original Appeal No..64212/2018 had imposed penalty of Rs.1 lakh on the appellant under Section 112[a] of the Customs Act, 1962. The aforesaid order is said to have been despatched to the appellant on 03.07.2018. However, the appellant filed an appeal on 05.09.2018 beyond the period of limitation prescribed under Section 128 of Customs Act, 1962.

3. The appellant submits that there is substantial question of law

involved as the appellant had no role to play in the import. It is submitted on behalf of the appellant that though the Tribunal had concluded that the appellant was not the mastermind, despite the same, the Tribunal had held that the penalty imposed under Section 112[a] of Customs Act, 1962 by the Joint Commissioner of Customs, Group 6 Chennai II Customs Commissionerate and confirmed by the Commissioner of Customs [Appeals-II], Chennai was correct.

4. We have heard the learned counsel for the appellant and the learned counsel for the respondent.

5. The Tribunal appears to have entertained the appeal filed by the appellant, though there is no discussion in the order passed by the Tribunal as to how the appeal before the Appellate Commissioner was in time. On the other hand, the Tribunal has examined the issue on merits and concluded that the appellant was not the mastermind, however, confirmed the penalty

S. VAIDYANATHAN,J.

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imposed under Section 112[a] of Customs Act, 1962, while substantially reducing the quantum from Rs.1 lakh to Rs.10,000/-

6. We are of the view that the present appeal is not maintainable and it is liable to be dismissed. The Tribunal should not have entertained the issue relating to levy of penalty as the appeal before the Appellate Commissioner itself was time-barred. The civil miscellaneous appeal stands dismissed. No costs. However, we leave open the issue pertaining to interpretation of Section 112[b] in an appropriate case.

(S.V.N.J.) (C.S.N.J.)
18.10.2022

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To
The Commissioner of Customs,
Chennai II Comissionerate, No.60,
Rajaji Salai, Customs House,
Chennai – 600 001.

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