BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **17.02.2022**

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A(MD)Nos.1304 and 1305 of 2015
and
C.M.P(MD)No.2198 and 2782 of 2017

1.S.Tomy Corera,
Prop.M/s.Rosel Engineering Works,
64 B, Santhai Road,
Tuticorin - 628 002. :Appellant/Appellant in C.M.A (MD)No.1304 of 2015

2.L.Anand Morais,
Branch Manager,
M/s.Relay Shipping Agency Limited,
World Trade Avenue,
Harbour Estate,
Tuticorin - 628 002. :Appellant/Appellant in C.M.A (MD)No.1305 of 2015

.vs.

1.The Additional Commissioner of Customs,
Mandapam Road,
Ramanathapuram,
Pin - 623 503.

2.The Commissioner of Customs and
Central Excise(Appeals),
No.1, Williams Road,
Cantonment,
Tiruchirappalli - 620 001.

3.The Customs Excise and Service Tax
Appellate Tribunal,
South Zonal Bench,
26, Haddows Road,
Chennai - 600 006. : Respondents/Respondents in both C.M.As'

COMMON PRAYER: Civil Miscellaneous Appeals filed under Section 130 of the Customs Act, 1962, against the impugned Final Order

No.40572/2015, dated 22.5.2015, in A.No.C/40537/2014 and A.No.C/40546/2014, on the file of Customs Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai.

For Appellant in both C.M.As' :Mr.M.Kumar

For Respondents in both C.M.As' :No appearance

COMMON JUDGMENT

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[Judgment of the Court was made by **R.SUBRAMANIAN,J.**]

These Civil Miscellaneous Appeals are filed challenging the order of the CESTAT confirming the levy of penalty under Section 112 of the Customs Act.

2.The penalty was levied on the ground of smuggling of fuel oil and Mooring ropes. A sum of Rs.3,75,000/- was imposed as penalty in C.M.A(MD)No.1305 of 2015 and another sum of Rs.2,25,000/- was imposed as penalty in C.M.A(MD)No.1304 of 2015.The penalty was imposed considering the value of the goods that was attempted to be smuggled.

3.Mr.M.Kumar, learned counsel for the appellants would vehemently contend that as per Section 112 of the Customs Act, the maximum penalties that could be imposed is Rs.5,000/-.

4.We are unable to agree with the contentions of the learned counsel for the appellants. Section 112 of the Customs Act provide for a levy of penalty in case of smuggling of goods, which reads as follows:

> *"112. Any person - (a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111, or abets the doing or omissions of such an act, or (b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under Section 111, shall be liable -*
>
> *(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding five times the value of the goods or one thousand rupees, whichever is the greater;*

(ii) in the case of dutiable goods, other than prohibited goods, to a penalty not exceeding five times the duty sought to be evaded on such goods or one thousand rupees, whichever is the greater :

(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under Section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty not exceeding five times the difference between the declared value and the value thereof or one thousand rupees, whichever is the greater;

(iv) in the case of goods falling both under clauses (i) and (iii) to a penalty not exceeding five times the value of the goods or five times the difference between the declared value and the value thereof or one thousand rupees, whichever is the highest;

(v) in the case of goods falling both under clauses (ii) and (iii) to a penalty not exceeding five times the duty sought to be evaded on such goods of five times the difference between the declared value and the value thereof or one thousand rupees, whichever is the highest."

5.Clause (1) of Sub-Section (b) of Section 112 of Customs Act states that the penalty may not exceed the value of the goods or Rs.5,000/- whichever is greater. The Penalty can be levied upto the value of the goods.The value of the goods smuggled as per show cause notice issued in one case is Rs.4,27,000/- and in another case it is nearly Rs.21,72,000/-.Comparing to the value of the goods, the penalty levied is not greater than the value of the goods. Hence we do not find any merit in the appeals and accordingly, the same stand dismissed. No costs. Consequently, connected Miscellaneous Petitions are dismissed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

vsn

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Southern Zonal Bench of CESTAT,
Chennai.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

+2 CC to M/s.M.KUMAR, Advocate (SR-7039,7040[F] dated 18/02/2022)

C.M.A(MD)Nos.1304 and 1305 of 2015 and
C.M.P(MD)No.2198 and 2782 of 2017
17.02.2022

RD(07.03.2022) 4P 6C