IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.08.2024

CORAM

THE HON'BLE MR.JUSTICE R.SURESH KUMAR
AND
THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.1842 of 2018

Shri C.K.Litheesh
Proprietor
M/s.Flamingo Shipping Services
New No.116, Old No.275
Thambu Chetty Street
Chennai 600 001. ... Appellant

Vs.

The Commissioner of Customs
Chennai IV Commissionerate
Customs House, No.60, Rajaji Salai
Chennai - 600 001. ... Respondent

Civil Miscellaneous Appeal under Section 35G of the Central Excise Act, 1944 to set aside the Final Order No.40754 of 2017 dated 12.05.2017 passed by the CESTAT, Chennai.

For Appellant : Mr.G.Derrick Sam
for M/s.S.Murugappan

For Respondent : Mr.A.P.Srinivas
Senior Standing Counsel

J U D G M E N T
(Delivered by R.SURESH KUMAR,J.)

This appeal arises out of the common order dated 12.05.2017 passed by the CESTAT in Final Order No.40754 of 2017.

2. In fact, it was a common final order passed by the CESTAT, against which already C.M.A.No.2940 of 2017 was filed. The said appeal was decided by a Division Bench of this Court, where, one of us was a party (R.Suresh Kumar, J.) on 30.10.2017 **(K.V.Prabhakaran -vs- Commissioner of Customs, Chennai)** reported in **2019(365) E.L.T.877 (Mad).** It was a detailed judgment, where the involvement of not only the said K.V.Prabhakaran but also the present appellant had been discussed. The relevant portion of the order reads thus:

" 32. On perusal of the stand taken by the appellant both in the statement and in the reply to the show cause notice, it reveals that, one Mr.C.K.Litheesh of M/s.Flamingo Shipping Services admittedly had asked the appellant to lend his CHA license for arranging customs clearance of his clients consignment, for which the said Litheesh promised to pay a sum of Rs.1,000/- per consignment for lending his CHA license. Since the consignment in question was booked in the name of M/s.Rubicon Mineral Process, the shipping bill produced in the name of M/s.Rubicon Mineral

Process was not at all handled by the appellant, instead the said Litheesh of M/s.Flamingo Shipping Services handled it and the staff of the appellant also did not attend to the customs clearance of the said consignment, as the appellant did not get any authorisation from the exporter namely M/s.Rubicon Mineral Process and no authorisation letter has been admittedly given by the exporter. It has been the categorical statement of the appellant that, he did not know anyone from M/s.Rubicon Mineral Process and he had further stated that he had neither communicated with them nor had any contacts with them."

3. Ultimately, the Division Bench in the said decision has dismissed the appeal and the substantial questions of law arisen in that appeal were answered in favour of the Revenue and against the appellant therein.

4. The present appeal arises out of the very same common order of the CESTAT. Mr.G.Derrick Sam, learned counsel for the appellant, even though is trying to distinguish the case of the appellant, we are not impressed with the same because of the facts which have already been dealt with extensively in the said decision of K.V.Prabhakaran's case cited supra. Therefore, we do not find any reason to take a different view than what has been taken by the Co-ordinate Bench in the aforesaid case.

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KST

5. Resultantly, the questions of law are answered as against the appellant and in favour of the Revenue. The Civil Miscellaneous Appeal fails and it is dismissed. No costs.

(R.S.K.,J.) (C.S.N.,J.)
21.08.2024

NCS : Yes/No
Index : Yes/No
KST

C.M.A.No.1842 of 2018