IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02-07-2025

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

CMA No.3233 of 2004 and
CMA No.104 of 2005

The Commissioner of Customs (Air)
Customs House,
Chennai-600 001

Appellant(s)

Vs

1. M/s.Hetero Drugs Ltd.,
Hetero House, H.No.8-3-166/7/1,
Erragudda, Hyderabad 500 018.

2.Shri K.Rami Reddy,
General Manager - Materials,
M/s.Hetero Drugs Ltd., Hetero House,
H.No.8-3-166/7/1, Erragudda,
Hyderabad 500 018

3.Customs, Excise and Service Tax Appellate Tribunal,
South Zonal Bench,
1st Floor, World Trade Centre,

Chambers of Commerce Building Complex,
Kempagowda Road, Bangalore 560 009.

Respondent(s)

CMA No. 104 of 2005

The Commissioner of Customs (Air)
Custom House, Chennai-1

Appellant(s)

Vs

1. M/s Hetero Drugs Ltd.,
Hetero House, H.No.8-3-166/7/1,
Erragudda, Hyderabad - 500 018.

2.Shri K.Rami Reddy
General Manger - Materials,
M/s.Hetero Drugs Ltd.,
Hetero House, H.No.8-3-166/7/1,
Erragudda, Hyderabad - 500 018.

3.Customs, Excise & Service Tax Appellate Tribunal
South Zonal Bench, 1st Floor, World Trade Centre,
Chambers of Commerce Building Complex,
Kempegowda Road, Bangalore – 560 009

Respondent(s)

CMA No. 3233 of 2004

PRAYER

Appeal filed under Section 130 of the Customs Act, 1962 to consider the substantial question of law raised by the Revenue and set aside the impugned order in final order No.1594 SZB/2003 dated 12.12.2003, passed by the Tribunal, Bangalore Bench.

CMA No. 104 of 2005

PRAYER

Appeal filed under Section 130 of the Customs Act, 1962 to consider the substantial question of law raised by the Revenue and set aside the impugned order in final order No.1595 SZB/2003 dated 12.12.2003, passed by the Tribunal, Bangalore Bench.

For Appellant(s): Ms.Revathi
(in both appeals)

For Respondent(s): Mr.C.Manishankar (for R1)
Senior Counsel
for Mr.S.Arun Prasad
R2 - No appearance
R3 – Tribunal
(in both appeals)

COMMON JUDGMENT

(Order of the Court was made by N.Senthilkumar J.)

Aggrieved against the orders passed by the CESTAT, South Zonal Bench, Bangalore, in Order Nos.1594 SZB/2003 dated 12.12.2003 and 1595 SZB/2003 dated 12.12.2003, the present appeals have been preferred by the department.

2.Respondents 1 & 2 had challenged an order in original passed by the Commissioner of Customs, Airport, Chennai, raising a demand of Rs.5,36,20,526/- as per Section 28 r/w Section 147 of the Customs Act, 1962 along with penalty of Rs.5,31,42,396/- under Section 114A of the said Act on the first respondent and Rs.15,00,000/- on the second respondent. Respondents 1 & 2 are in the business of manufacturing bulk drugs and other pharmaceutical products. They have been importing various raw materials required for manufacture of their finished goods. To handle the customs clearing activity at Chennai Sea and Airports, they had engaged the services of M/s.Far Port International, Chennai, a proprietary concern run by one Mr.D.Ramesh. The respondents 1 to 2 used to pay the duty in the form of crossed demand drafts, favouring the Commissioner of Customs-A/c Hetero Drugs, in respect of the materials imported and received the goods as mentioned under the cover of Bills of Entry. The respondents 1 & 2 were also taking modvat credit on the strength of these Bills of Entry. The said bills were regularly scrutinized and defaced by the Central Excise authorities.

3.In September 1999, the respondents 1 & 2 wanted to bond certain imported goods, and permissions were refused. When the said goods were cleared, it came to light that one Mr.D.Ramesh, Proprietor of M/s.Far Port International has indulged in malafide action of substituting the goods at the Bonded Warehouse. The CHA has sent the goods imported under the cover of fake Bills of Entry to the respondents 1 & 2. The said amounts were sent by them in the form of demand drafts in favour the "Commissioner of Customs – A/c.Hetero Drugs".

4.The Commissioner of customs preferred a police complaint against M/s.Far port International Ltd., and investigation commenced and the respondents 1 & 2 were examined by the police and statements were recorded on 23.09.1999 by verifying the Bills of Entry and the details of demand draft, which was furnished by the respondents in favour of the Commissioner of Customs, Madras. According to the respondents, they also provided confirmatory letters from bank indicating that the amounts in question vide the demand drafts had been debited from their account and credited to the account of the Commissioner of Customs, Madras.

5.A show cause notice was issued for proposing demand of Rs.5,31,42,396/- + Rs.4,78,130/- under Section 28(1) of the Customs Act, 1962 and to impose penalties on the said ground.

6.A demand of Rs.5,31,42,396/- was sought to be made on the ground that the cash numbers indicated in 68 Bills of Entry out of a total of 347 Bills of Entry, the payment of duty relates to other importers and not to the respondents 1 & 2. A demand of Rs.4,78,130/- was sought to be made in respect of the time expired bond No.5748 dated 19.09.1995 relating to the goods still lying in the warehouse.

7.A reply was sent by the respondents 1 & 2 on 08.06.2000 and a written submission was also submitted on 27.07.2001, denying the allegations made in the show cause notice. On 13.11.2001, personal hearing was given to the respondents 1 & 2 before the Commissioner of Customs and written submission submitted by the respondents 1 & 2 on 15.11.2001. Out of the impugned 68 Bills of Entry, in respect of 52 Bills of Entry, the appellant's case is that, the cash numbers indicated in the Bills of Entry for payment of duty relate to the other importers and not to the respondents 1 & 2. With regard to the remaining 16 Bills of Entry, the appellant's case is that the amount of duty has either been paid partly by the clearing agent at the time of clearance, or in full by the clearing agent subsequent to the clearance of the goods.

8.During investigation, the second respondent viz., Mr.K.Rami Reddy, General Manager (Materials) provided the details of the duty payments made through their bankers as well as receipts of confirmation from their bankers with regard to the payment of duty amounts made by them. Those details are available in the letter issued by the State Bank of Hyderabad with regard to various demand drafts sent in respect of the 68 Bills of Entry. On the above factual position, which narrated the activities undertaken by M/s.Far Port International in substituting the goods or in forging the documents, the Appellant had come to the conclusion that the malafide act had been committed by Mr.Ramesh, Proprietor of Far Port International on his own or in assistance with persons other than the importer. The said Mr.Ramesh had expired on 01.09.1999. Thus, the appellant cannot initiate proceedings against the respondents 1 & 2 herein. Taking into consideration all the above aspects, the Tribunal has passed the following order:

> *"12 (a). The liability of a principal i.e. the appellants company herein, for the acts committed by the agent i.e. CHA at Chennai will only be with reference to the bonafide acts committed by the agent and not for the malafide acts committed by the Agent or the Custom House Officers. On examination of Section 147 of the Customs Act, 1962, it is found that Section 147 (1) of the Customs Act contemplates that an agent can on behalf of the owner, importer or the exporter do things which the Act requires the owner, importer or the exporter to do. Section 147 (2) thereof stipulates any such thing done by an agent shall, unless the contrary is proved, be deemed to have been done with the knowledge and the consent of such owner importer etc. Therefore, an importer is liable to establish that the actions of the CHA were in excess of the authority given to him. If that is on record, then in terms of the exception set out in Section 147 (2), the importer would not be liable. In terms of Section 147 (3) an agent is also considered to be an importer of the goods in addition to the liability of the importer. The proviso to Section 147 (3) states that if a short levy or a non-levy arises as a result of an act which is not willful in nature on the part of the agent, the amount is to be recovered first from the owner and then from the agent. A conjoint reading of the above provisions would indicates that in terms of Section 147 (3), if an agent is guilty of willful act, negligence or default, he would alone be liable to pay duty, having been conferred with the status of an importer under Section 147 (3) of the Customs Act, 1962.*
>
> *(b) The opening portion of Section 147 (1) of the Customs Act, 1962 refers to those actions which the Customs Act requires an importer to do. For instance, Section 46 of the Customs Act, 1962 requires an importer to file a bill of entry for home consumption of the goods or for warehousing in the prescribed form. Section 59 of the Customs Act,1962 requires the importer to execute a bond in*

case the goods are to be entered for warehousing, for an amount equal to twice of the duty assessed on the goods and to observe all attendant formalities. The acts of the CHA and or others unknown in substituting the goods and in faking the bill of entry are not acts which an importer was expected to do under the Customs Act, 1962. In this case, as could be seen from the factual position narrated in the show cause notice itself, the activity undertaken by M/s. Far Port International in substituting the goods or in forging the documents were acts done by Shri Ramesh on his own or in assistance with persons other than the importer.

The department having come to the conclusion that the malafide act has been committed by Shri D Ramesh, Proprietor of Far Port International who is reported to have expired on 01/09/1999, cannot entitle them to proceed against the appellants to recover from them alleged non-payment/short payment of duty, which in fact stand paid and credited to the Revenue's accounts.

(c) That a principal is not to be considered guilty for the wrongful acts of the agents, is settled law, please see Bombay High Court in the case of M. Shashikant & Company and others Vs. UOI reported in 1987 (30) ELT 868 (Bom). Therefore, provisions contained in the proviso to Section 147 (3) of the Customs Act would come into play if the CHA had undertaken the malicious activity, has been settled by the following decisions:

> *a)K.M. Mohamed Ghouse & Co., Vs. ACCE (1979 (4) ELT J683 (Mad)*
> *b)Commissioner of Customs, Cochin Vs. Trivandrum Rubber Works Ltd. (1999 (106) ELT 9 (SC)*
> *c)Pilmen Agents Pvt Ltd., Vs. Commissioner of Customs, Madras (2000 (126) ELT 79 (Mad)*

(d) The demand in this case is made under Section 28 of the Customs Act, 1962. That a demand to recover customs duty can be made only under Section 28 and not under Section 147 is set out by the Madras High Court in the case of Pilmen Agents Pvt. Ltd., Vs. Commissioner of Customs, Madras reported in 2000 (126) ELT 79 (Mad). and such a demand could be made on an agent is a case taken this.

13. There cannot be an allegation of the appellants having any intention to evade payment of duty when the entire amount in question has been paid by way of demand drafts in favour of the Commissioner of Customs as and when clearances were sought by them. In fact it is to establish their bonafide it is the appellants who had requested the Commissioner to defer the proceedings till the completion of the investigations by the CBI, which the Commissioner has rejected. Such a rejection shows undue haste to confirm the demand and impose penalty. Such an order past in haste, cannot be sustained following the decision of the Tribunal in the case of Zeenath International Supplies & Anr. Vs. Commissioner of Customs, Chennai, Final Order No.296 & 297/2003 dated 28/2/2003.

14. When no duty demand as made out could be confirmed on the appellants, they are not liable for any penalty under the Customs Act 1962.

15. Consequently, the appeals are showed after setting aside the order."

9.Aggrieved by the same, the present Appeals have been filed by the department. The facts are not in dispute.

10.Heard Ms.Revathy, learned counsel for the appellant and Mr.C.Manishankar, learned senior counsel for Mr.S.Arun Prasad, learned counsel for the first respondent.

11.Mr.C.Manishankar, learned senior counsel for the first respondent contended that the first respondent has given all the material particulars sought in the show cause notice and in the investigation conducted by the Appellant. The learned senior counsel further contended that Mr.Ramesh, Proprietor of Far Port International, was responsible for the entire act and the first respondent cannot be held responsible for the act of the said Mr.Ramesh, Proprietor of Far Port International and thus the liability cannot be fastened against them.

12.Per contra, Ms.Revathy, learned counsel for the appellant contended that the action taken against the respondents 1 & 2 are in accordance with law. The learned counsel further contended that out of 68 Bills of Entry, cash numbers indicated in the 52 Bills of Entry for payment of duty is related to other importers and not to the respondents 1 & 2. The learned counsel further contended that the order passed by the CESTAT, Bangalore against the appellant is not in accordance with law.

13.CMA.No.3233 of 2004 was admitted on the following substantial questions of law:

> *"(1) Whether the Tribunal is correct in law in its reasoning that the demand to recover Custom Duty can be made only under Section 28 of Customs Act, 1962 and not under Section 147 of the Customs Act 1962, when there is a Statutory provision under Section 147 of Customs Act 1962, which commands duty liability on the importer if there is a failure of his statutory obligation ?*
> *(2) Whether the reliance of the Tribunal on the case law Pilman Agents Pvt. Ltd, ..VS..Commissioner of Customs, Chennai reported in 2000 (126) ELT 79 (Mad) is correct in law, though there is a factual difference ?*
> *(3) Whether the Tribunal is correct in accepting to defer the adjudication proceedings till the completion of the investigations by the CBI, by relying upon a judgment, which differs, on facts?*
> *(4) Whether the Tribunal is correct in holding that the liability of the principal that is respondent No.1 will only be with reference to the bona fide acts*

committed by the Agent and not for the mala fide acts committed by the Agent of the Custom House Office, since the principal, that is respondent No.1 and 2 have given instructions to the agent, that is M/s.Farport International, in warehousing the imported goods and clearance of the warehoused goods in spite of clear statutory provision under Section 147(3) of the Customs Act 1962 ?

(5) Whether the Tribunal has erred in overlooking the actual legal position, while discussing the law relating to bank draft at para 8(a), in view of the fact that as per section 5 of the Negotiable Instruments Act, 1881 "bill of exchange" is an instrument in writing containing an unconditional order signed by the maker, directing a certain person to pay a certain sum of money only to or to the order of a certain person or to the bearer of the instrument."

14.CMA.No.104 of 2005 was admitted on the following substantial questions of law:

"1. Whether the Tribunal is correct in law in its reasoning that the demand to recover Customs Duty can be made only under Section 28 of Customs Act, 1962 and not under Section 147 of the Customs Act, 1962, when there is a clear Statutory backing under Section 147 of Customs Act, 1962, which commands duty liability on the importer if there is a failure of his statutory obligation?

2. Whether the reliance of the Tribunal on the case law Pilman Agents Pvt. Ltd. v. Commissioner of Customs, Chennai reported in 2000 (126) ELT 79 (Mad) is correct in law, though there is a factual difference?

3. Whether the Tribunal is correct in accepting to defer the adjudication proceedings till the completion of the investigations by the CBI, by relying upon a judgment, which differs, on facts?

4. Whether the Tribunal is correct in holding that the liability of the principal that is respondent No.1 will only be with reference to the bona fide acts committed by the Agent and not for the mala fide acts committed by the Agent of the Customs House Office, since the principal, that is respondents No.1 and 2 have given instructions to the agent, that is M/s Farport International, in warehousing the imported goods and clearance of the warehoused goods inspite of clear statutory provision under Section 147(3) of the Customs Act, 1962?

5. Whether the Tribunal is correct in giving a finding that duty amounts in question have gone into the Consolidated Fund of the Union of India, inspite of the fact that the deposited amount and the clearance of the imported goods differed by fake Cash Department Deposit Numbers as per the investigation and the cash deposit only in spurious book of account and not in reality?
6. Whether mere delivery of a demand draft, which was drawn in favour of the Commissioner of Customs to the CHA by the importer amounts to payment under the Customs Act, 1962 as well as the Negotiable Instruments Act, 1881?
7. Whether by mere handing over the draft to the CHA, the importers have discharged the responsibility towards the imported goods and/or discharged the liability to pay duty on them? As per the Customs Act, it is the prime and sole responsibility of the importer to pay the duty as prescribed. The procedure is that any amount payable has to be paid either at the cash section of the Customs Department or at the nominated scheduled bank?"

15.The Tribunal has negatived the claim of the appellant by relying upon the following observation made by this Court in the case of *M/s.Pilmen Agents (Pte.) Ltd., Vs. Collector of Customs* reported in *2000 (126) ELT 79 (MAD):*

> *"On a reading of Sections 12, 28 and 147 together, it is clear that in cases in which duty had not been levied, the owner should be called upon to pay if the non-levy was not due to the wilful act, negligence or default of the agent. If the amounts cannot be recovered from the owner, the Assistant Collector may collect it from the agent."*

16.As per the statements of the employees and wife of the agent D.Ramesh, the said agent has indulged in wrongful activities. The Tribunal has taken note of the fact that in the show cause notice issued by the Appellant, the aforesaid statements regarding the malafide acts of the agent are also recorded.

Therefore the appellant is not right in imposing demand against the respondents 1 and 2 for the malafide acts of their agent by invoking Section 147(2) of Customs Act. More specifically, when the importer/respondents 1 & 2 have shown their bonafide by producing the demand drafts issued for payments in favour of the appellant, the respondents 1 and 2 cannot be held liable.

17.All the substantial questions of law raised by the appellant are only on factual aspects. In the absence of any substantial question of law raised in the Appeals, except the factual aspects, which is in favour of the respondents, we do not see any reason to interfere with the order passed by the Customs Excise & Service Tax Appellate Tribunal, South Zonal Bench, Bangalore, in order Nos.1594 & 1595/SZB/2003 dated 12.12.2003.

18.In view of the same, both the Appeals are dismissed. No costs.

(A.S.M., J) **(N.S.,J)**

02-07-2025

Index:Yes/No
Speaking/Non-speaking order
Internet:Yes
Neutral Citation:Yes/No

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To

1. M/s Hetero Drugs Ltd.,
Hetero House, H.No.8-3-166/7/1,
Erragudda, Hyderabad - 500 018.

2.K.Rami Reddy
General Manger - Materials,
M/s.Hetero Drugs Ltd.,
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