IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.09.2025

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.3500 of 2012
and
M.P.Nos.1 & 2 of 2012

M/s.Delphi TVS Diesel Systems Ltd.,
Represented by its Vice President,
Finance & Company Secretary,
Mr.M.N.Subramanian, Mannur,
Thodukadu Post, Sriperumbudur Taluk,
Kanchipuram District – 602 105. ... Appellant(s)

Vs.

1. The Customs, Excise & Service Tax Appellate Tribunal,
   South Zonal Bench, Shastri Bhavan Annexe,
   1st Floor, No.26, Haddows Road, Chennai – 600 006.

2. Commissioner of Central Excise (Adjudication),
   Customs House, No.60, Rajaji Salai,
   Chennai – 600 001. ... Respondent(s)

Prayer: Civil Miscellaneous Appeal filed under Section 130A of the Customs Act, 1962, against Final Order No.722/2012 dated 14.06.2012 on the file of the Customs, Excise and Service Tax Appellate Tribunal, South

Zone Bench, Chennai.

For Appellant(s) : M/s.S.Murugappan
For R1 : Tribunal
For R2 : Mr.Rajnish Pathiyil,
Special Panel Counsel

ORDER

(Order of the Court was made by **C.SARAVANAN, J.**)

In this civil miscellaneous appeal, the appellants are aggrieved by the final order dated 14.06.2012 in No.722 of 2012 of the Tribunal (hereinafter referred to as 'the impugned order'). By the aforesaid order, the Tribunal had disposed of a batch of cases in C.Nos.65, 66, 142, 146, 400 to 402, 387, 396 to 398 and 408 to 410 of 2007 and 63, 74, 183, 19, 73, 86, 182, 115, 171, 203, 209, 13, 68, 23, 177, 72, 18, 52, 181, 70, 17, 85, 179, 53, 71, 180, 69, 14, 64, 87, 178, 248, 263, 20, 80, 208, 16, 78, 187, 75, 184, 79, 188, 77, 15, 186, 153, 154, 170, 76, 185, 81 and 21 of 2008.

2. Some of the appeals against the aforesaid impugned order dated 14.06.2012 came up before this court in C.M.A.Nos.84, 807, 89, 90, 816, 18, 826, 783, 808, 809, 810, 86, 87, 253, 794, 795, 796, 789, 790, 779, 780, 781, 811, 782, 784, 787, 788, 822, 823, 824, 825, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 812, 813, 814, 815, 785, 786, 791, 792, 793, 817,

818, 819, 820, 821,827, 828, 829, 85, 873, 88, 776, 777 & 778 of 2013, which came to be disposed of by this court vide order dated 30.10.2024.

3. Relevant portion of the order dated 30.10.2024 of the Division Bench of this Court is reproduced below:-

> *"25.However, as far as the importers are concerned, the Tribunal has deleted the penalty in full and we see no justification for the same. The discussion in regard to the liability of the importers has been set out at paragraph 10 and the Tribunal notes that the evidence gathered by Revenue unambiguously and succinctly proved that the TRAs used by the importer / appellants were fake, false, forged and fabricated.*
>
> *26.The Tribunal stated at paragraph 10.3 as follows:*
>
>> *'When the importer appellants acquired DEPB scrips from market without being acquired from original acquirer, as an abundant caution, to avoid evil consequence of fraudulently obtained scrips, could have safeguarded their interest causing enquiry from JDGFT as to genuineness of the scrips. But that was not done. Such appellants failed to acquire title over the scrips but became beneficiary of ill got scrips. Notificational benefit was availed at the cost of public exchequer which is required to be surrendered for the undue gain made. Bona fides were not established by the appellants for which*

> *they submitted themselves to the loss of duty caused to Revenue by their act of use of DEPB scrips not acquired legitimately.'*

> *27.The Tribunal quotes the former Lord Chief Justice of England, Sir Edward Coke, that 'fraud avoids all judicial acts, ecclesiastical or temporal' and the judgment of the Supreme Court in S.P.Chengalvaraya Naidu v. Jagannath [AIR 1994 SC 853].*

> *28.Having stated that the importers had not conducted due diligence from the market and also having referred to the evidence gathered by Revenue that established the falsity of the scrips, we do not find any justification in the Tribunal having deleted the penalty on importers in full. The exercise of discretion as in the case of the traders/brokers would have been appropriate in the case of importers as well. Hence, we restore the penalty to the extent of 50% of the same in line with the penalty confirmed in the case of the brokers and traders. The revenue appeals are disposed as above."*

4. The ultimate conclusion of the Division Bench in Paragraph No.45 is reproduced below:

> *45.The CESTAT had also ordered that appropriate disciplinary action be taken as against the officials of the Customs House and the Department of Revenue Intelligence due to whose involvement or negligence the fraud was perpetrated. This Court had sought a statusreport with regard to the*

investigation initiated and the following status report has forwarded by the Principal Commissioner of Customs (General) Vigilance Section, Mumbai enclosed with the status report filed by Mr.Pathiyil reading thus:

> *'2. In this regard, in pursuance of the Investigation Report dated 01.12.2014 and DG (Vig.)/CVO, New Delhi, letter dated 01.10.2015, vide which it was advised to take disciplinary action against Shri Mustaq Chaudhary, UDC, Shri Sajid Khan, LDC and Shri Jitendra Padre, Sepoy, the status of the disciplinary action taken against the said officers are as follows:*
>
> *(i) Shri Mustaq Chaudhary, then UDC:- Shri Mustaq Chaudhary, had already been dismissed from Govt. Service w.e.f. 02.05.2013 in another disciplinary case initiated against him, for his alleged involvement in large scale fraud in imports through JNCH by abusing warehousing facility. Since, he was not in Govt. Service and not bound by the CCS (Conduct) Rules, 1964, no action could be contemplated against him under CCS (CCA) Rules, 1965. For the said reasons, thedisciplinary action against him was not suggested in this case, in the above said Investigation Report dated 01.12.2014.*
>
> *(ii)Shri Sajid Khan, LDC: Shri Sajid Khan was on unauthorized absent from 02.05.2011. CIU, NCH, found it very difficult to trace out his whereabouts and correspondences made*

> *by CIU, NCH, on his number of addresses were received back undelivered. Therefore, under Rule 19 (ii) of the CCS (CCA) Rules, 1965, Shri Sajid Khan, LDC (TA) was dismissed from the Government service, vide Order dated 29.02.2016.*
>
> *(iii) Shri Jitendra R. Padte, Sepoy:- Charge Memorandum dated 29.11.2016 for major penalty was issued to Shri Jitendra R. Padte. The Inquiry Officer was appointed to inquire into the case. The IO found the charges as "Not Proved". Subsequently, the Disciplinary Authority, vide Order dated 20.02.2020, dropped all the charges levelled against Shri Jitendra R. Padte in the said Charge Memorandum dated 29.11.2016 and exonerated him from the case.*
>
> *3. This is for kind information and necessary action at your end.*
>
> *4. This issues with the approval of the Pr.Commissioner of Customs (Gen.), NCH, Mumbai Zone-I."*

> *46.The Civil Miscellaneous Appeals filed by the individual appellants are disposed in terms of this order. No costs. Connected miscellaneous petitions are closed."*

5. Since the issue pertains to the appellant herein, in terms of the directions issued in C.M.A.No.84 of 2013 and batch, dated 30.10.2024, this civil miscellaneous appeal stands dismissed. No costs. Consequently, the

connected miscellaneous petition is closed.

(S.M.S.,J.) (C.S.N.,J.)
08.09.2025

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

To

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S.M.SUBRAMANIAM, J.
and

C.SARAVANAN, J.

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