



C.M.P.(MD) No.6632 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 10.02.2025

CORAM:

THE HONOURABLE **DR.JUSTICE G.JAYACHANDRAN**

AND

THE HONOURABLE **MS.JUSTICE R.POORNIMA**

C.M.P.(MD)No.6632 of 2024

in

C.M.A.(MD)No.SR21394 of 2018

The Commissioner of Customs,
Customs House,
New Harbour Estate,
Tuticorin – 628 004.

... Petitione

-Vs-

Sakthi Vinayagar Enterprises,
Balaji Illam,
No. 153, Amman Nagar,
Thindal Post,
Erode – 638 009,
Tamil Nadu.

... Respondent

PRAYER in C.M.P.(MD)No.6632 of 2024: Petition filed under Order IV Rule 9(ix) of AS Rules, to condone the delay of 1391 days in filing the civil miscellaneous appeal in CMA(MD)No.SR21394 of 2018.

PRAYER in C.M.A.(MD)No.SR21394 of 2018: Appeal filed under Section 130 of the Customs Act, 1962, to allow the appeal and set aside the Final Order No. 42897 of 2017 passed by the CESTAT, dated 10.11.2017.



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C.M.P.(MD) No.6632 of 2024

For Petitioner : Mr.N.Dilipkumar
Senior Standing Counsel

ORDER

DR.G.JAYACHANDRAN, J.
AND
R.POORNIMA, J.

For the alleged evasion of duty by undervaluation, the Director of Revenue Intelligence has issued a show cause notice to the respondent on 07.07.2008. Pursuant to that, the Commissioner of Customs, Tuticorin, has passed the order in original on 20.10.2008. Subsequently, the Commissioner of Customs & Central Excise (Appeal), Tiruchirappalli, has passed the order in Appeal No.82/2009, dated 28.10.2009. The said order in Appeal No.82/2009 is the subject matter before the CESTAT. Since preliminary objection regarding competency of DRI officials causing show cause under the Customs Act, 1962, was raised by the respondent in the said appeal, the CESTAT, after considering the law prevailing at that point of time, had disposed of the appeal with the following observations:-

*“By following the ratio laid down by the Hon'ble High Court of Delhi in the case of **BSNL (Supra)** as well as by considering totality of facts and circumstances, we set aside the impugned order and remand the matter to the original adjudicating*



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C.M.P.(MD) No.6632 of 2024

*authority to first decide the issue of jurisdiction after the availability of Hon'ble Supreme Court decision in the case of **Mangli Impex** and then on merits of the case but by providing an opportunity to the assessee of being heard. Till the final decision, the **status quo** will be maintained."*

Being aggrieved by the same, the present Civil Miscellaneous Appeal was laid before this Court with delay of 1391 days.

2. When the matter is taken up for hearing for consideration by this Court today, it is brought to the notice of this Court by the learned standing counsel representing the Customs Department that the Hon'ble Supreme Court has disposed of **Mangli Impex** case holding the officials of DRI are competent to issue show cause notice under the Customs Act, 1962, and also permitted the Department to adjudicate the issue on merits. Therefore, the learned standing counsel appearing for the Customs Department informs this Court that he has been instructed by the Department to withdraw the appeal with liberty to proceed with adjudication on merits as directed by the Hon'ble Supreme Court in Review Application petition No.400/21 filed by the **Commissioner of Customs vs. Canon India Private Limited (Mangli Impex Case)**. The communication from the Department dated 29.01.2025 is also placed before this Court for consideration.



C.M.P.(MD) No.6632 of 2024

3. In view of the above facts, the Customs Department is permitted to withdraw the appeal and proceed with the adjudication as per the Orders of the Hon'ble Supreme Court in Review Application petition No.400/21 filed by the ***Commissioner of Customs vs. Canon India Private Limited (Mangli Impex Case)***. Accordingly, this civil miscellaneous petition is dismissed as withdrawn. Consequently, connected civil miscellaneous appeal is also dismissed as withdrawn at SR stage itself. No costs.

[G.J., J.] & [R.P., J.]
10.02.2025

NCC : Yes / No
Index : Yes / No
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C.M.P.(MD) No.6632 of 2024

DR.G.JAYACHANDRAN, J.

AND

R.POORNIMA, J.

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Order made in
C.M.P.(MD)No.6632 of 2024
in
C.M.A.(MD)No.SR21394 of 2018

Dated:
10.02.2025