BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.02.2025

CORAM:

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

AND

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

C.M.A.(MD)Nos.1175 of 2016 & 554 of 2015
and
M.P.(MD)No.1 of 2015 & C.M.P.(MD)No.9061 of 2018
in
C.M.A.(MD)No.554 of 2015

M.Vijay Anand ... Appellant in C.M.A.(MD)No.1175/2016
Kalandar Seeni Ahmed ... Appellant in C.M.A.(MD)No.554 / 2015

-Vs-

1.The Customs, Excise and Service Tax
Appellate Tribunal,
South Zone Bench, Shastri Bhawan Annex
1st Floor, 26, Haddows Road,
Chennai-600 006.

2.Commissioner of Customs,
Customs House, New Harbour Estate,
Tuticorin. ... Respondents
in C.M.A.(MD)No.1175/2016

1.The Commissioner of Customs,
Custom House, Tuticorin.

2.The Customs, Excise and Service Tax
Appellate Tribunal,
Shastri Bhawan Haddows Road,
Chennai-600 006. ... Respondents
in C.M.A.(MD)No.554/2015

PRAYER in C.M.A.(MD)No.1175 of 2016: Civil Miscellaneous Appeal filed under Section 130 of Customs Act, 1962, praying this Court to call for the records of the 1st respondent in File C/S/202/2012 in C/258/2012 C/Misc/658/2012 & C/S/207/2012 in C/264/2012 and Misc.Order No.905/12 and stay order No. 832-833 dated 11.12.2012 and set aside the same and consequently, to direct the 1st respondent to hear the main appeal of the appellant without the insistence of pre-deposit as ordered.

PRAYER in C.M.A.(MD)No.554 of 2015: Civil Miscellaneous Appeal filed under Section 130 of Customs Act, 1962, praying this Court to set aside the stay order No.832/2012, dated 11.12.2012 in Appeal No.C/258/2012 passed by the Customs, Central Excise and Service Tax Appellate Tribunal, South Zone Bench, Chennai in the matter of appeal preferred by the appellant herein against the Order-in-Original No.8 of 2012 dated 29.06.2012 passed by the 2nd respondent.

For Appellant	: Mr.S.Vinayagamani (in C.M.A.(MD)No.1175 of 2016)
For Appellant	: Mr.R.Parthiban, for M/s.Hari Radhakrishnan (in C.M.A.(MD)No.554 of 2015)
For Respondents (in both C.M.As.)	: Mr.R.Nandakumar, Senior Standing Counsel

COMMON JUDGMENT

DR.G.JAYACHANDRAN, J.

AND

R.POORNIMA, J.

The appellants herein have been found guilty of cheating Customs Department in respect of duty drawback evasion and therefore, the following penalty was imposed on them:-

"(xvii) I impose a penalty on the following exporters under Section 114(iii) and 114AA of the Customs Act, 1962.

a) ?.1,00,000/- (Rupees One Lakh only) on M/s Shri V. Satheesh, proprietor of V.V.S. Exports, Tuticorin.

b) ?.1,00,000/- (Rupees One Lakh only) on Shri T. Latton Durai, Proprietor of M/s Santhosh Imports & Exports, Tuticorin.

c) ?.1,00,000/- (Rupees One Lakh only) on Shri A. Maria John Bosco, Proprietor of M/s St. Antony Imports & Exports, Tuticorin.

d) ?.1,00,000/- (Rupees One Lakh only) on Shri S. Sivakaminathan, Proprietor M / s Shivaa Impex, Tuticorin.

e) 2.1,00,000/- (Rupees One Lakh only) on Shri G.Subash Chandra Bose, Proprietor of M / s Gayathri International Imports & Exports, Panagudi.

f) ?.1,00,000/- (Rupees One Lakh only) on Shri A. Suresh Antonio Inbaraj, Proprietor of M / s Ruby Imports & Exports, *Tuticorin.*

g) ?.1,00,000/- (Rupees One Lakh only) on Shri S. Sathish Kumar, Proprietor of M/s Vadivel Imports & Exports, Tirunelveli.

h) ?.2,00,000/- (Rupees Two Lakhs only) on Shri R. Ravi Shankar, Proprietor of M/s Perfect Impex, Tuticorin

i) ?.1,00,000/- (Rupees One Lakh only) on Shri B. Antonysamy, Proprietor of M/s Vinnarasi International Exports, Tuticorin

j) ?.1,00,000/- (Rupees One Lakh only) on Shri K. Faizal Rahman, Proprietor of M/s Faiz International Exporting & Importing, Kerala

(xviii) Iimpose a penalty of ?2,00,00,000/- (Rupees Two Crores Only) on Shri Kalandar Seeni Ahmed, Chennarunder Section 114 and 114AA of the Customs Act, 1962.

(xix) I impose a penalty of ?.1,00,00,000/-(itupees One Crore Only) on Shri Fazul Rahman Rahman of Thondi under Section 114 and 114AA of the Customs Act, 1962.

(xx) I impose a penalty of ?.1,00,00,000/- (Rupees One Crore Only) on Shri Mohamed Zipreel, Chennai under Section 114 and 114AA of the Customs Act, 1962.

(xxi)I impose a penalty of ?.50,00,000/- (Rupees Fifty Lakhs Only) on Shri Vijay Anand, M/s Meenakshi Agencies, Tuticorin under Section 114 and 114AA of the Customs Act, 1962.

(xxii) I impose a penalty of ?.25,00,000/- (Rupees Twenty Five Lakhs Only) on Shri T. Joseph John Britto, Proprietor of M/s St. John Britto Exports Logistics, Tuticorin, and M/s Luxury

Exports, Tuticorin, under Section 114 and 114AA of the Customs Act, 1962."

2.Aggrieved by the said Order-in-Original, two appeals along with stay applications filed by one Vijay Anand and Kalandar Seeni Ahmed. The appellate Tribunal, while considering the application for waiver of pre-deposit to avail right of appeal, had taken into consideration the plea of these two appellants and had passed the following order:-

> *"7 We are not impressed with the plea of financial hardships raised by Shri Kalandar Seeni Ahmed. This plea is not supported by any evidence. In the facts and circumstances, we direct Shri Kalandar Seeni Ahmed to pre-deposit an amount of Rs. 50,00,000/- (Rupees fifty lakhs only) towards the drawback demand and a further amount of Rs.15,00,000/- (Rupees fifteen lakhs only) towards penalty within four weeks and report compliance to the DR/AR on 16.1.2013. DR/AR to report to the Bench on 30.1.2013. Subject to due compliance there will be waiver and stay in respect of the balance amount of penalty and the balance demand of the drawback amount.*
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> *8. The learned consultant for Shri Vijay Anand, submits that he did not have any fraudulent intent in the matter of filing Shipping Bills and therefore he cannot be fastened with any liability. This argument has also been contested by the learned Jt. Commissioner (AR) who refers elaborately to the statement given*

by Shri Vijay Anand under Section 108 of the Customs Act. In these statements, Shri Vijay Anand gave full account of the modus operandi of Shri Joseph John Britto and Shri Kalandar Seeni Ahmed. We have also peruse these statements which are, by and large, in the nature of incriminating himself and others. These statements were never retracted. It is not in dispute that Shri Vijay Anand virtually acted as CHA for all the IEC holders / exporters. He has also been found to have possessed ATM cards and cheque books pertaining to the accounts into which the drawback amounts were credited. There is also a further finding that these accounts were in fact opened by Shri Kalandar Seeni Ahmed and, thereby, the entire drawback went to his credit. In this scenario, we are not impressed with the plea of Innocence raised by the consultant for Shri VijayAnand. The penalty imposed on him is to the extent of Rs. 50 lakhs. The learned consultant has submitted inter alia that his client received an amount of Rs.3,000/- per transaction totaling to Rs.6 lakhs. This itself would prima facie indicate a deliberate involvement of Shri Vijay Anand in the fraudulent transactions. In the facts and circumstances of this case, we are inclined to direct Shri Vijay Anand to predeposit an amount of Rs.20 lakhs towards the penalty imposed on him. In respect of the joint and several liability fastened on him, there shall be waiver and stay. In the result, Shri Vijay Anand shall deposit Rs.20,00,000/- (Rupees twenty lakhs only) within four weeks and report compliance to DR/AR on 16.1.2013. DR/AR to report to the Bench on 30.1.2013. In the event of due compliance, there will be waiver and stay in *respect of the balance amount of penalty as well as the balance amount of the drawback amount."*

3.This portion of the conditional order is challenged by the said Vijay Anand and Kalandar Seeni Ahmed in C.M.A.(MD)Nos.1175 of 2016 and 554 of 2015 respectively.

4.The learned counsel appearing for the appellants would submit that the Order-in-Original suffers fundamental infirmity by fixing penalty on all 14 persons jointly and severally. He would further submit that there is no principle of fixing liability jointly and severally in case of custom duty evasion. While so, the Order-in-Original contrary to the settled principle of law had fastened liability of paying penalty on all the persons. Further, in view of the subsequent amendment to the law, the pre-condition for preferring appeal is only 10% of the penalty, whereas the impugned order of the appellate Tribunal is more than 50% of the penalty imposed.

5.The learned Standing Counsel appearing for the respondents would submit that the transaction regarding the duty drawback covers the period during the assessment year 2009-2010. The Order-in-Original was passed in the year

2012, taking note of the fact that there was a deliberate suppression of transaction and misdeclaration by the appellants to avail duty drawback fraudulently, which came to light in the course of the investigation conducted by Directorate of Revenue Intelligence of Tuticorin Unit and a sum of Rs.1,94,26,197/- mis-declared as value of the goods exported found to be false and the Commissioner of Customs re-determined the value of the goods as Rs.13,14,400/- since 14 exporters had exported worn-out goods by misdeclaring it as shoe upper, bed valence, inflatable balls and toys, garments and fabrics by valuing goods unduly in excess with an intention to avail duty drawback facility. Therefore, the Commissioner had rightly held the appellants guilty of mis-declaration and imposed penalty as stated above.

6.The appellate Tribunal, having found gravity of the offence, granted leave to prefer appeal on condition to make a pre-deposit as stated above and there is no infirmity or excessive jurisdiction in the order impugned. The Commissioner of Customs, having found that there was an evasion of duty drawback, has imposed penalty as stated above. If at all there is any ground to challenge the said Order-in-Original, statue provides right of appeal on condition to make a pre-deposit of drawback and penalty deemed fit by the Tribunal. The decision of the Tribunal is now put to challenge in these appeals. Though there is a change in law as alleged by the learned counsel for the appellants, this Court is very conscious of the fact that the taxation regime as prevailing in the year 2019 to be applied in the case in hand. Any change of law shall not give retrospective application, when the issue relates to the revenue of the State.

7.It is to be noted that the appellants had at privileged by keeping these appeals pending for more than 8 years without pursing the appeals and without paying pre-deposit fixed by the Tribunal. The said concession itself is more than what the law provides for a tax evader. Hence, these Civil Miscellaneous Appeals are dismissed as devoid of merits. The amount of pre-deposit mentioned in the impugned order to be deposited within a period of six weeks from the date of receipt of a copy of this order, if the appellants are really interested in pursing the appeals. Failing which, the Department is at liberty to proceed against them in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

[G.J., J.] & [R.P., J.]
06.02.2025
(½)

NCC : Yes / No
Index : Yes / No

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To

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Appellate Tribunal,
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1st Floor, 26, Haddows Road,
Chennai-600 006.

2.Commissioner of Customs,
Customs House, New Harbour Estate,
Tuticorin.

3.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

DR.G.JAYACHANDRAN, J.

AND

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C.M.A.(MD)Nos.1175 of 2016 & 554 of 2015

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