IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2026

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE P. DHANABAL

C.M.A.Nos. 863, 864, 865 & 866 of 2010
and
M.P.Nos. 1,1,1 & 1 of 2010

M/s Vikram Traders
Rep. By its General Manager,
Mr.S.Shivashankar
Subramanyapura, Bangalore. .. Appellant
in C.M.A.No. 863 of 2010

Mr.Y.M.Vinay
Partner
M/s Vikram Traders,
Subramaniapura,
Bangalore. .. Appellant
in CMA No. 864/2010

M/s. Sri Krishna Spinning & Weaving Mills (P) Ltd.,
Rep. By its General Manager,
Mr.S.Shivashankar,
Subramanyapura,
Bangalore. .. Appellant
in CMA No.865/2010

S.Shivashankar
General Manager
M/s. Vikram Traders, Subramanyapura,
Bangalore. .. Appellant
in CMA No. 866/2010

vs

1.Customs, Excise and Service Tax Appellate Tribunal,
Shastri Bhavan Annex,
No.26, Haddows Road, Chennai – 600 006.

2.The Commissioner of Customs,
Customs House,
Tuticorin.

.. Respondents
in all appeals

Prayer in CMA No. 863 of 2010: Appeal filed under Section 35G of the Central Excise Act, 1994 to set aside the Final Order No.1091/2009 dated 17.08.2009 on the file of the 1st respondent.

Prayer in CMA No. 864 of 2010: Appeal filed under Section 35G of the Central Excise Act, 1994 to set aside the Final Order No.1092/2009 dated 17.08.2009 on the file of the 1st respondent.

Prayer in CMA No. 865 of 2010: Appeal filed under Section 35G of the Central Excise Act, 1994 to set aside the Final Order No.1093/2009 dated 17.08.2009 on the file of the 1st respondent.

Prayer in CMA No. 866 of 2010: Appeal filed under Section 35G of the Central Excise Act, 1994 to set aside the Final Order No.1094/2009 dated 17.08.2009 on the file of the 1st respondent.

For Appellant	:	Mr.B.Satish Sundar for Mr.G.R.M.Palaniappan (in all appeals)
For Respondents	:	No appearance for R1 Mr.Su.Srinivasan, Senior Standing Counsel for R2 (in all appeals)

COMMON JUDGMENT

(Delivered by Dr. ANITA SUMANTH, J.)

This is a batch of four appeals and in C.M.A.No. 863 of 2010, the following substantial question of law admitted on 15.04.2010 reads as follows:-

> *"Whether the respondents are right in holding that the appellants are misdeclared the goods imported by them and confiscated the same under sec.111(m) of the Customs Act, 1962 admittedly when there is no misdeclaration by the appellants?"*

2. In the remaining three appeals viz., C.M.A.Nos. 864, 865 & 866 of 2010, the substantial question of law admitted on 15.04.2010 is as follows:-

> *"Whether the respondents are right in imposing penalty to the main appellant firm and its partner is valid, since the partnership firm and partner are one and the same imposing penalty to both are valid in law?"*

3. As far as C.M.A.No. 866 of 2010 is concerned, the appellant / S.Shivashankar has passed away on 17.05.2021 and a copy of the death certificate is available at page 57 of the typed-set dated 17.12.2025. In light of the aforesaid, this appeal abates.

4. In C.M.A.No. 863 of 2010, the appellant is the importer of a

consignment under Bill of Entry No. 398250 dated 26.10.2006. The admitted description of the goods imported is Cotton Griege (Grey) fabric. The appellant claims the benefit of Duty Free Replenishment Certificate (DFRC licence) bearing No. 0710045387 dated 12.06.2006.

5. Upon clearance, the DRI had examined the consignment, finding the goods to be Corduroy and not Cotton Griege (Grey) fabric. The consignment was seized on 10.11.2006 and an Order-In-Original came to be passed on 30.11.2007, wherein,

(i) exemption under Notification No.90/04-Customs dated 10.09.2004 was denied and duty and CVD levied and demanded,

(ii) 40622.50 meters of Corduroy confiscated under Section 111(m) of Customs Act, 1962 read with Section 3(3) of Foreign Trade (Development & Regulation) Act, 1992 for misdeclaration of goods,

(iii) option to redeem was given on payment of Rs.4,00,000/- and appropriate duty, to be exercised within one month from receipt of the order,

(iv) penalty of Rs.47,77,420/- under Section 114A imposed on the appellant and,

(v) penalties of Rs.2,00,000/-, Rs.4,00,000/- and Rs.5,00,000/- imposed on Sri Krishna Spinning and Weaving Mills (appellant in CMA 865/2010), Rs.4,00,000/- on S.Shivashankar (appellant in CMA No.

866/2010 – dismissed as abated) and Rs.5,00,000/- on Mr.Y.M.Vinay, Partner of M/s. Vikram and Director of M/s. Sri Krishna respectively, all under Section 112 of the Act.

6. A first appeal was filed before the Central Excise and Service Tax Appellate Tribunal (CESTAT/Tribunal) which substantially confirmed the Order-in-Original, though reducing the quantum of penalty. There is a categoric finding of fact at para 3 of that order dated 31.08.2009, that the imported goods were Corduroy and not Grey fabric as declared, and hence misdeclaration was clearly established.

7. Even before us, Mr.Satish, who appears for the appellant fairly does not dispute the nature of the goods imported but only attempts to bring the same within the ambit of Grey Cotton fabric, albeit unsuccessfully. In light of the aforesaid discussion, we find no merit in this appeal. The question of law as far as C.M.A.Nos. 863 of 2010 and 864 of 2010 are concerned, is answered in favour of the Revenue. C.M.A.Nos. 863 & 864 of 2010 are dismissed.

8. As far as C.M.A.No. 865 of 2010 is concerned, the appellant is Sri Krishna Spinning and Weaving Mills, the predecessor in title to the DFRC licence that was transferred to the appellant on 18.10.2006. No case has been made out to sustain the penalty in this case as, admittedly, this appellant had no role to play in the subject import. This is an

admitted position. The question of law is thus answered in favour of the assessee and against the Revenue. C.M.A.No. 866 of 2010 is allowed.

9. There shall be no order as to costs. Connected miscellaneous petitions are closed.

[A.S.M, J.] [P.D.B, J.]
02.01.2026

Index:Yes/No
Neutral Citation:Yes
ssm

To

1.The Customs, Excise and Service Tax Appellate Tribunal,
Shastri Bhavan Annex,
No.26, Haddows Road, Chennai – 600 006.

2.The Commissioner of Customs,
Customs House,
Tuticorin.

DR. ANITA SUMANTH,J.
and
P. DHANABAL ,J.

ssm

C.M.A.Nos. 863, 864, 865 & 866 of 2010

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