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C.M.A.Nos.1162 to 1164 of 2014



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :15.04.2026

Pronounced on :29.04.2026

CORAM

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

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

C.M.A.Nos.1162 to 1164 of 2014

C.M.A.No.1162 of 2014

M/s A.P.P.Enterprises,
WZ-612, Sri Nagar Main Road,
Shakur Basti Delhi 110 034.

..Appellant/Appellant

/versus/

The Commissioner of Customs (Seaport-Export),
Customs House, No.60, Rajaji Salai,
Chennai 600 001.

..Respondent/Respondent

Civil Miscellaneous Appeal has been filed under Section 130 of the Customs Act, 1962, to set aside the Stay Order No.203 of 2012, dated 07.03.2012 on the file of the Customs, Excise and Service Tax Appellate Tribunal, Chennai and allow the appeal.

For Appellant :Ms.Dhanamadhiri for
Mr.T.Shanmugam

For Respondent :M/s Rajnish Pathiyil

C.M.A.No.1163 of 2014

Mr.Vinod Aggarwal
Partner, A.P.P.Enterprises,
WZ-612, Sri Nagar Main Road,
Shakur Basti Delhi 110 034.

..Appellant/Appellant

/versus/



The Commissioner of Customs (Seaport-Export),
Customs House, No.60, Rajaji Salai,
Chennai 600 001.

..Respondent/Respondent

Civil Miscellaneous Appeal has been filed under Section 130 of the Customs Act, 1962, to set aside the Stay Order No.204 of 2012, dated 07.03.2012 on the file of the Customs, Excise and Service Tax Appellate Tribunal, Chennai and allow the appeal.

For Appellant :Ms.Dhanamadhiri for
Mr.T.Shanmugam

For Respondent :M/s Rajnish Pathiyil

C.M.A.No.1164 of 2014

Mr.Dwaraka Prasad Parekh,
Partner, A.P.P. Enterprises,
WZ-612, Sri Nagar Main Road,
Shakur Basti Delhi 110 034.

..Appellant/Appellant

/versus/

The Commissioner of Customs (Seaport-Export),
Customs House, No.60, Rajaji Salai,
Chennai 600 001.

..Respondent/Respondent

Civil Miscellaneous Appeal has been filed under Section 130 of the Customs Act, 1962, to set aside the Stay Order No.205 of 2012, dated 07.03.2012 on the file of the Customs, Excise and Service Tax Appellate Tribunal, Chennai and allow the appeal.

For Appellant :Ms.Dhanamadhiri for
Mr.T.Shanmugam

For Respondent :M/s Rajnish Pathiyil



COMMON JUDGMENT

(Judgment was made by Dr.G.JAYACHANDRAN,J.)

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C.M.A.No:1162 to 1164 of 2014 are by (i) M/s A.P.P. Enterprises; (ii) Mr.Vinod Agarwal, Partner, M/s A.P.P. Enterprises; and (iii) Mr.Dwaraka Prasad Parekh, Partner, M/s A.P.P. Enterprises respectively.

2. M/s A.P.P. Enterprises, having its registered office at Delhi is a Partnership Firm run by Mr.Vinod Agarwal and Mr.Dwaraka Prasad Parekh, as its Partners. At its factory in Haryana for conversion of ‘Areca nuts/Betel nuts’ into ‘Betel Nut Tannin’ as a job work imported huge quantity of Areca nuts/Betel nuts from their foreign supplier M/s P.T.Ganpathi Trading Indonesia. It declared that on conversion into ‘Betel Nut Tannin’, the same will be exported to the supplier at Indonesia and availed the duty free concession under the Notification No:32 of 1997, dated 01.04.1997.

3. As per the Customs Department Notification No:32 of 1997, to avail the concession, the importer has to ensure the following conditions:-

“(i)that the goods are imported for execution of an export order placed on the importer by the supplier of the goods for jobbing.

(ii)that the goods so imported, including resultant



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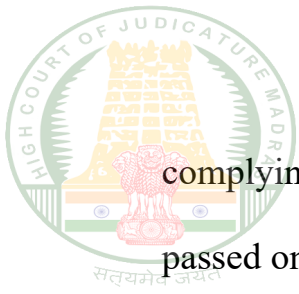
products, are re-exported to the supplier of the goods or to any other person which the said supplier may specify within six months, provided that the wastage arising during the process of jobbing, as determined in terms of SION norms published vide P.N.No.2(P.N)/1997-2002 and to where such SION norms for resultant product has not been published, the satisfaction of Asst.Commissioner of Customs or Deputy Commissioner of Customs and Central Excise shall be disposed off in the manner as may be specified by them.

(iii)that the goods are utilized only for the discharge of export obligation and no part there of shall be sold, loaned, transferred or otherwise used or disposed off.

(iv)that the jobbing is undertaken in accordance with the procedure set out in the Customs (import of goods at concessional rate of duty for manufacture of Excisable goods) Rules 1996.

4. Based on information and reasonable belief that the areca nut/betel nut imported were diverted for manufacturing Pan Masala/Gutka for local consumption, instead for the job work and export of 'Betel Nut Tanning' in contravention of the Notification condition (iii) read above, SIIB, Chennai Customs took up the matter for investigation of the past imports.

5. Show Cause Notice dated 20/03/2008 was issued in respect of 144 Bills of Entry. Order-in-Original No:9652 of 2009 was passed on 17/09/2009. Stay petition Nos:203 to 205 of 2012 were disposed of on 07.03.2012 for not



complying the condition. Final Order No:513 to 515 of 2012 by CESTAT was passed on 09.05.2012.

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6.The Team of Investigating Officers of Customs Department visited the factory of the importers to examine the process of conversion of betel nuts into tannin. The 144 consignments of areca nuts/betel nuts of assessable value of Rs.19.80 crores were not even reaching to the factory premises for job work, but diverted for manufacturing pan masala/gutka in and around, New Delhi. However, under Notification No.32/97, the duty forgone against 144 bills of entry works out to Rs.20,12,62,829/-. To account the diverted portion of the betel nuts, the importers have claimed 80% of wastage and the same was destroyed, on the permission of the Assistant Commissioner of Central Excise under the supervision of range officers, but there was no proof for the said destruction of mixing the waste betel nuts with timber and used as fuel in their boiler. Insofar as Export Scheme related to the jobbing work is concerned, the proper export code provided for the said scheme is 20. However, the importers, while filing all the shipping bills for exports, have mentioned the Export Scheme code 99 which is meant for 'No Foreign Exchange Involved (NFEI)'. By miscoding the code, two sets of parallel invoices bearing the same serial No. for each export shipment prepared. One set was produced while filing the shipping bills against Export Code 99 and the other set was produced for the purpose of realisation of



export proceeds to fulfil export obligation in all cases as required under Notification No.32/97.

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7. The intention of the importers to take advantage of the Notification illegally was found and therefore, the importers were called upon to show cause as to why: _

(a) the duty of Rs.20,12,62,829/- not paid against 150 bills of Entry listed in Annexure 1 under Customs Notification No.32/97 should not be demanded and recovered from them under proviso to Section 28 of the Customs Act, 1962 .

(b) interest as applicable should not be demanded under Section 28(AB) of the Customs Act 1962.

(c) the betel nuts imported vide Bills of Entry listed in the Annexure-1 under Customs Notification 32/97 totally valued at Rs.19,80,27,722/- should not be held liable to confiscation under Section 111(o) of the Customs Act, 1962 read with Section 11 of the Foreign Trade (Development and Regulation) Act, 1992

(d) penalty should not be imposed on M/s APP Enterprises under Section 114A of Customs Act, 1962 for their act of omission/commission made the imported betel nuts liable for confiscation.”

8. To the above said show cause notice, dated 20.03.2008, the importers replied vide letter dated 09.01.2009. After considering the explanation and records, the order-in-original No.9652/2009 dated 17.09.2009 was passed with the following effect ;



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ORDER

“(1)I deny the benefit of Customs Notification 32/97 dated 01.04.97 for the goods cleared under 144 Bills of Entry (as detailed in Annexure-1 to the Show Cause Notice).

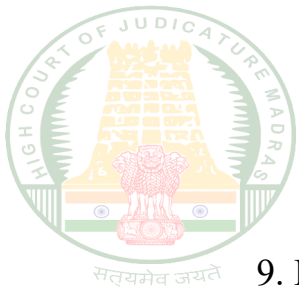
(2) I order recovery of the duty saved amount of Rs.20,12,62,829/- (as detailed in Annexure II to the Show Cause Notice) along with interest thereon under proviso to Section 28(I) read with Section 28AB of the Customs Act, 1962.

(3)I order confiscation of the Betel Nuts imported vide the aforementioned 144 Bills of Entry-totally valued at Rs.19,80,27,722/- already cleared in terms of Customs Notification 32/97 dated 01.4.1997 under Section 111(o) of the Customs Act, 1962 read with Section 11 of the Foreign Trade (Development and Regulation) Act, 1992. However, I allow the importers to redeem the goods on payment of fine of Rs.3,00,00,000/- (Rupees Three Crores) only under Section 125 of the Customs Act, 1962.

(4) I impose a mandatory penalty of Rs.20,12,62,829/- (Rupees Twenty Crores Twelve Lakhs Sixty Two Thousand Eight Hundred Twenty Nine) only along with applicable interest thereon on M/s. APP Enterprises under Section 114A of Customs Act, 1962.

(5) I impose a penalty of Rs.50,00,000/- (Rupees Fifty Lakhs) only each on Shri. Dwarka Prasad Parekh and Shri. Vinod Agarwal Partners of M/s. APP Enterprises under Section 112(a) of Customs Act, 1962.

(6) I do not impose any penalty on M/s.Mathan Traexim Ltd.”

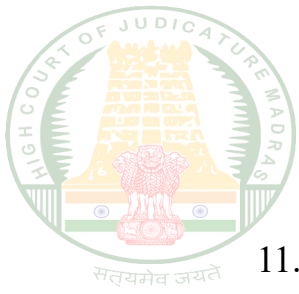


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9. Being aggrieved by the above said order-in-original, the importers filed appeals before the Customs, Exercise and Service Tax Appellant Tribunal along with applications for waiver of free deposit and stay of impugned order.

10. The Tribunal on 07.03.2012 in stay order Nos.203, 204, 205 of 2012 passed the following order ;

“8. We have given considerable thought to the interest of Revenue and pleadings of the appellants to ascertain whether the order passed by us shall cause any way undue hardship on the appellants when no balance of convenience tilts in their favour but irreparable injury was seen to have been caused to Revenue by them. There was no material before us to appreciate that appellants deserved waiver of predeposit during pendency of their appeals. Accordingly, the appellant, M/sAPP Enterprises is directed to deposit Rs.10,00,00,000/- (Rupees Ten Crores only) within eight weeks from today and the other appellants Shri Dwarka Prasad Parekh and Shri Vinod Agarwal shall make deposit of Rs.10,00,000/- each (Rupees Ten Lakhs only) within 8 weeks from today. All the parties shall make compliance on 9.5.2012. Subject to compliance, there shall be waiver of pre-deposit of balance amounts during pendency of the appeals.”



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11. Final Order Nos.513 to 515 of 2012 was passed on 9.05.2012 by the Customs, Excise and Service Tax Appellant Tribunal dismissing the appeals on the ground that the appellant failed to pay the provisions to Section 129E of the Customs Act, 1962 read with stay order Nos.203 to 205 of 2012, dated 7.03.2012. The importer firm and its partners, being aggrieved, had approached the High Court by filing W.P.Nos.23799, 23800 and 23801 of 2012. The above three writ petitions along with similar writ petitions were heard by the Division Bench of this Court and the same got disposed of on 30.10.2013 holding that the order passed by the Customs, Excise and Service Tax Appellant Tribunal, in terms of Section 35D of the Customs Act 1962 or Section 129E of the Customs Act, the appealable in terms of Section 35G of the Excise Act, 1944 or Section 130 of the Customs Act 1962 and therefore, the writ petitions were dismissed as not maintainable. When there is the statutory appeal remedy, permitted the writ petitioners to canvass correctness of the order passed by the CESTAT in their appeal by raising all the grounds as well as substantial questions of law available to them. As a consequence of the dismissal of the writ petitions and the liberty given to them to file statutory appeal under Section 130 of the Customs Act, 1962, the importers firm namely, M/s APP Enterprises and his Partners namely Vinod Agarwal and Dwaraka Prasad Parekh have preferred C.M.A.Nos.1162 to 1164 of 2014 which are before us for our consideration.



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12. The following Substantial Questions of Law are framed for consideration:-

(i) Whether the order of the Tribunal is right in directing 50% of pre-deposit is unjustifiable in as much as for the earlier period the very same tribunal has allowed the petitioner appeal in respect of identical issue decided?

(ii) Whether the order of the Tribunal is justified in ordering pre-deposit overlooking fact that identical issue has already been determined by the Tribunal in favour of the petitioner for earlier period?

13. The learned counsel appearing for the appellant submitted that when an identical issue for the very same appellant was originally decided against the appellant by the Commissioner of Customs vide the order-in-original No.7268/2008, dated 5.03.2008, against which the appellant preferred an appeal before the Tribunal wherein, the Tribunal vide final order Nos.900 to 903 of 2008, dated 19.08.2008 in appeal Nos.C-150-152/2008 was set aside in the Order-In-Original No.7268 of 2008 dated 05.03.2008 and allowed the appeal of the importer. The present demand arising out of the order-in-original No.9652 of 2009 dated 17.09.2009 is covering one more set of identical transaction under identical circumstances and for the very same appellant. Therefore, there cannot

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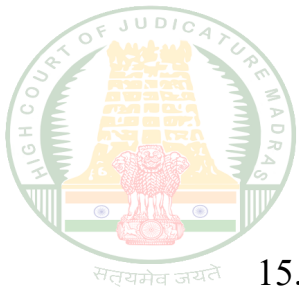
be any pre deposit condition while there was a waiver of pre deposit in the earlier appeal. The entire betel nuts imported was sent to the factory at Yamuna Nagar for conversion of tannin. The final product were duly exported and the wastage was destroyed based on the permission granted by the Central Exercise Authorities. The raw materials imported and the resultant products after the jobbing work were exported in compliance with all statutory procedures and norms. Hence, the allegation of misuse or diversion of the imported goods is ill-conceived. Moreover, when the identical allegation been held disproved by the CESTAT, Chennai in respect of the order-in-original No.7286 of 2008 dated 5.03.2008. It is also contented by the learned counsel that the demand made by invoking the extended period is clearly unsustainable. The bill of entry pertaining to the period from 13.2.2004 to 26.12.2005. Whereas the show cause notice was issued only on 20.03.2008. Therefore, the action against importers is hopelessly barred by limitation.

14. The learned counsel appearing for the revenue submitted that the material collected during the investigation and visit to the importers' factory had clearly established that the goods imported under 144 bills of entry from 13.2.2004 to 26.12.2005 were not utilised for the export purpose under the Notification No.32/97 dated 1.4.1997. The goods were diverted in the local market and the records were manipulated as if after conversion into tannin the



resultant waste were destroyed as per the provisions of Notification No.32/97.

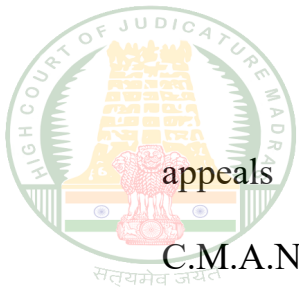
The goods were imported through Chennai Port for claiming exemption on payment of duty. To cover up the diversion of the goods into the local market, the export shipping bills were filed at ICD, Delhi, under a different export code in order to escape the trial of misuse of job work Notification No.32/1997. The learned counsel for the department emphasizes that the export of the tannin-in-paste form was shown against scheme code 99 as 'free trade samples' with no foreign exchange involved, which clearly indicates a deliberate device adopted by the importers to misuse the Notification No.32/97. While importing the betel nuts the importers declared that the same is imported under the job work scheme code 20. Therefore, the manufactured product ought to have been exported only under the said code. This would have given sufficient opportunity to the authorities to scrutinise the products more effectively. In order to avoid such scrutiny, the importers have declared the goods exported under the Scheme Code 99 as if no foreign exchange involved. For the said purpose, the importer have prepared two sets of parallel invoices with the sole intention to defraud the Government of its rightful and legitimate custom duty. A perusal of the investigation report and the statement recorded from the partners of the firm made it abundantly clear that the overseas supplier and the job worker in India, who had under common partnership were hand in glove in the nefarious scheme devised to misuse the job work notification.



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15. The learned counsel appearing for the department further submitted that the importers cannot take advantage of the order passed in their favour by CESTAT in final order Nos.900 to 903 of 2008, dated 19.08.2008, since it is already under challenge before this Court in C.MA.Nos.1162 to 1164 of 2014. Furthermore, even on facts, the order-in-original No.7268/2008 dated 05.03.2008 relates to consignment which had reached the port under the said bills of invoice while investigation was still pending. The reasoning for waiver of deficit penalty amount and predeposit for stay in that case has no application to the case in hand.

16. On a careful consideration of the submissions, it is to be noted that there is a difference between the facts in this case which deals about the past transactions and the goods which is the subject matter of the CESTAT in final order 900 to 903 of 2008 dated 19.08.2008 which is in respect of six bill of entries. In connection with consonance with reach the source pending the investigation of the past transaction of the importer. Hence, the facts of this case which is out come of thorough investigation at the factory and business premises of the importers vis-à-vis scientific report regarding efficacy of tannin extracted from inferior quality of bill needs requires different treatment of appreciating the evidence. The contention of the importer that the present

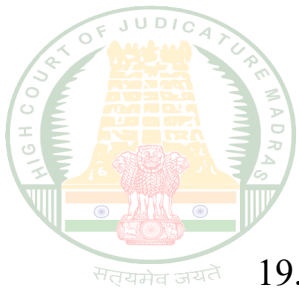


appeals are in continuous of the earlier departmental appeals in C.M.A.Nos.1224 to 1227 of 2010 is not whole correct.

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17. The primary objection raised by the importers/appellants that the demand is barred by limitation and the extension period is not applicable to the facts of the case, is also incorrect, since the bill of entry in question pertains to the period from 13.02.2004 to 26.12.2005. The show cause notice was issued, after the investigation and the collected documents were found incriminating. Having noticed that the customs duty had been forgone due to wilful mis-statement and suppression of facts, the show cause notice was issued on 20.03.2008, which is well within the limitation prescribed under Section 28(4) of the Customs Act, 1962.

18. Though the appellant contents that the Revenue has not brought forward any evidence of wilful suppression, the very fact that the importation of goods claiming exemption under Notification No.32/97 and while exporting, the correct code 20 was not mentioned but instead wrong code 99 was used and presenting the shipping bill at New Delhi, cannot be any no stretch of imagination, we considered as a bonafide clerical mistake particularly when this has been consistently done by the importer in respect of consignment 144 imported through bill of entry.



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19. Equally the contention of the importers that the DRI has given a clean chit to the importer is liable to be rejected outright for the sole reason that DRI is not an alternate agency of the customs. The line of investigation by DRI and the line of investigation by the Customs Department are neither identical nor exclusive to each other. The grant of exemption, levy of duty, and imposing penalty for wilful mis-declaration or wilful misstatement are exclusively within the domain of the Customs Department. In the present case, the Customs Department has taken an extensive investigation and collected very serious incriminating material against importer and the supplier, who were found to have common partners. They had in collusion and manipulated documents. The sale invoices seized from the Delhi office premises on 24.11.2006 had disclosed that a major part of betel nuts imported duty free under notification no.32/97 for job work had been sold to various manufacturers of pan masala and gutka in and around Delhi, even without reaching the factory premises of the importer at Yamuna Nagar, which is totally perverse of notification condition. There must be also a serious doubt raised in respect of the alleged manner in which the waste betel nuts were destroyed. The improper explanation given by the importer was rejected by the Commissioner of Customs. The Commissioner of Customs in the order-in-original had demonstrated how the importer had deceived the department by wilful suppression of material information.



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20. In paragraph Nos.3.6 and 3.7 of the order-in-original, which satisfies the Court that the importer cannot take advantage of contesting the appeal without pre-deposit, and for the sake of better understanding, the relevant portion is extracted below:-

31.6. In the context it is relevant to mention that in terms of Section 50(2) of the Customs Act, 1962, an exporter is required to make and subscribe to a declaration as to the truth of the contents of such Shipping Bills. However, in the instance case, in contrast to this express statutory provision M/sAPP Enterprises while filing the relevant Shipping Bills deliberately made an untruthful declaration in the Shipping Bills by suppressing the Job work code 20 and other particulars as required under job work exports. It is also relevant to mention that in the electronic processing of export documents in the EDI System, it is mandatory on the part of exporter/importer to furnish correct information. This is because the documents are processed in the electronic system without manual intervention. Wilful suppression of material information would disable the system to pick up inbuilt system interventions and it would not be possible for the Department Officials to co-relate and detect deviations and compliance regarding conditions of relevant Notification or the prescribed procedure thereto. As a matter of fact wilful suppression of material information is attributable to hoodwink the Department from its legitimate checks and dues. This is done to deflect the trail and defeat the interventions to check malpractices.

31.7 I also find that the importer has failed to demonstrate how 10% of the value addition as required under the Notification No.32/97 dated 01.04.1997 has been fulfilled due to the fact that the free Shipping Bills have



been filed under 'No foreign exchange involved'.

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21. For the said reason, we hold that the order of the Tribunal imposing a condition to pre-deposit of Rs.10 crores by the importer firm and Rs.10 lakhs each by its partners is fully justifiable. Likewise, the final order of the Tribunal dismissing the appeal for not complying the condition is also to be upheld. We find that the order of the Tribunal directing the importer to deposit 50% is reasonable. The waiver of pre-deposit in the other connected appeals of the importers are not in respect of identical facts and therefore, the claim of parity by the importers is not sustainable. Accordingly, the substantial questions of law are answered against the appellant.

22. As a result, *these Civil Miscellaneous Appeals by the importers stand dismissed as devoid of merits.* No costs.

(G.JAYACHANDRAN, J.)

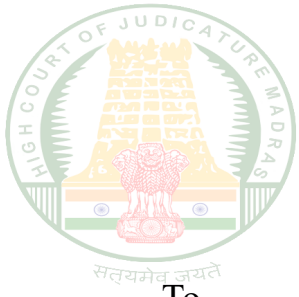
(R.SAKTHIVEL, J.)

29.04.2026

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C.M.A.Nos.1162 to 1164 of 20



To
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The Commissioner of Customs (Seaport-Export),
Customs House, No.60, Rajaji Salai,
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Dr.G.JAYACHANDRAN, J.
and
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Common Judgment made in
C.M.A.Nos.1162 to 1164 of 2014

29.04.2026