

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2008

CORAM:

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN
and
THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

C.M.A.No.2367 of 2007

Commissioner of Customs (Import)
Customs House
Chennai-600 001.

.. Appellant/Respondent

versus

1. M/s.A.Mohammed
No.73, 4th Cross Street
M.K.B.Nagar, Vyasarpadi
Chennai-600 039.

2. Customs Excise & Service Tax Appellate Tribunal
South Zonal Bench
Shastri Bhawan Annexe
1st Floor, 26, Haddows Road
Chennai-600 006.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 130 of the Customs Act, 1962, against the Final Order No.1059/2006 dated 9.11.2006 on the file of the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai arising out of order in Original No.49/2002 dated 28.03.2002 on the file of the Commissioner of Customs (SEA) Chennai.

For appellant : Mr.T.Chandrasekaran
Senior Standing Counsel for
Central Government

JUDGMENT

(Judgment of the Court was delivered by K.RAVIRAJA PANDIAN,J.)

Against the order of the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai, dated 9.11.2006 made in Final Order No.1059/2006, the Commissioner of Customs (Import) has filed the present Appeal under Section 130(1) of the Customs Act, 1962, by formulating the following substantial questions of law:

- (i) Whether the observation of Customs, Excise and Service tax Appellate Tribunal that the order of the Court exonerating an accused under Section 239 of Cr.P.C. was adequate to exonerate the accused in the adjudication proceedings is correct and valid in law, especially when the accused had also participated in the adjudication proceedings? and
- (ii) Whether the findings of the Customs, Excise and Service Tax Appellate Tribunal in its Final Order No.1059 of 2006 dated 9.11.2006 is sustainable on the ground that the first respondent is discharged as not guilty of the offences in the criminal proceedings is enough to set aside the impugned order dated 28.3.2002?

2. It is the case of the appellant that based on specific intelligence, the officers of the SIIB detained two containers UACU-295224 and TEXU-289984-6 at Chennai Port. On examination, the containers were found to contain 7,006 Kgs. of sandalwood logs/billets, 529 Kgs. of sandalwood small rough pieces and 4,20,000 pieces of peacock feathers in respect of the first container, and 6,169 Kgs. of sandalwood logs/billets, 1,467 Kgs. of sandalwood small rough pieces and 238 Kgs. of Mica powder, in respect of the second container bearing No.TEXU-289984-6. The total value of the sandalwood, peacock feathers and mica powder in both the containers were estimated to be Rs.64,27,750/-, Rs.16,80,000/- and Rs.3,570/- respectively. The goods were seized under Mahazar on 30.5.1993.

3. On completion of the investigation, a show-cause notice was issued to the first respondent herein along with some other persons who were found to have been involved in smuggling the above-said goods. On adjudication by the Commissioner of Customs (Sea), an order of absolute confiscation of 15.171 Metric Tonnes of sandalwood, 4,20,000 pieces of peacock feathers and 238 Kgs. of mica powder totally valued at Rs.81,11,320/- was passed and the same were recovered. Further, a penalty of Rs.5,00,000/- was imposed on the first respondent among others. Aggrieved by that order, the first respondent filed an appeal before the Customs, Excise and Service Tax Appellate Tribunal, which, by its Final Order No.1059/2006 dated 9.11.2006, allowed the appeal on the premise that the criminal case initiated at the instance of the appellant has ended in acquittal in favour of the first respondent.

4. It is contended by the learned counsel appearing for the appellant that the SIIB had booked the case on Specific Intelligence that sandalwood was being smuggled out in the guise of export cargo by the first respondent. The officers of the SIIB detained the container and unearthed the goods, after a detailed adjudication, the original authority confiscated the entire goods and imposed a fine of Rs.5,00,000/- against the first respondent on the ground that he was actively involved in smuggling the goods, which factum has been totally lost sight of by the Tribunal while allowing the appeal filed by the first respondent.

5. We heard the arguments of the learned counsel and perused the material on record.

6. It is on record that as against the action taken by the appellant for prosecuting the first respondent, the first respondent filed an application under Sections 397 and 401 of the Cr.P.C. before this Court. Upon a full-fledged enquiry, this Court discharged the first respondent under Section 239 of the Cr.P.C. This Court has held that the first respondent was dealing with red sander wood during the relevant period of time. The goods detained by the Department were only sandal wood, sandal wood chips peacock feathers and mica powder and there is no basis or material available to the Department either to entertain any suspicion or to implicate the first respondent in the alleged smuggling of sandal wood, sandal wood chips, peacock feathers and mica powder. By recording a categorical finding that the Department has not made out a prima facie case against the first respondent, this Court discharged the first respondent from the charges levelled against him.

7. It is an admitted case that there is no variance in the charges levelled and the acquisition made against the first respondent herein before the Customs Excise and Service Tax Appellate Tribunal, which was the subject matter of the Criminal Revision before this Court in which the first respondent was discharged. The basic material which formed the basis for levelling the charges against the first respondent herein, before this Court in the criminal proceedings and before the Tribunal are verbatim same, neither there is a deletion nor addition in it. In those factual circumstances of the case, the Tribunal allowed the appeal by stating that on the very same charges levelled against the first respondent, this Court, in the Criminal Revision, discharged him from all the charges and hence, the first respondent cannot be thrust with penalty in a sum of Rs.5,00,000/-, as there was no material to connect him with the alleged charges.

8. Learned counsel for the appellant sought to argue that the departmental proceedings cannot be compared with a criminal proceeding and for proving departmental charges, the preponderance of probability is enough, whereas in criminal proceedings, the charges have to be established beyond all reasonable doubt. We are not able to countenance the argument of the learned counsel for the appellant, as the charges are one and the same, and as against the action sought to be taken under the Customs Act, this Court has discharged the first respondent from the charge of attempting to export the goods against the provisions of the Customs Act. Hence, the contention raised by the learned counsel for the appellant deserves to be rejected and is accordingly rejected.

When the attempt of the appellant to establish the charges levelled against the first respondent has failed and this Court has also categorically viewed that there was absolutely no material adduced by the appellant to connect the first respondent in the

alleged smuggling activities, we are of the view that the Tribunal is correct in allowing the appeal filed by the first respondent and there is no question of law, much less substantial question of law arising to admit this appeal. Accordingly, this Civil Miscellaneous Appeal is dismissed. There will be no order as to costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

ksv

To:

1. The Commissioner of Customs (Import)
Customs House, Chennai-600 001.
2. The Customs Excise & Service Tax Appellate Tribunal
South Zonal Bench
Shastri Bhawan Annexe
1st Floor, 26, Haddows Road
Chennai-600 006.
3. The Commissioner of Income Tax (SEA)
Chennai.

1 cc To Mr.T.Chandrasekaran, Advocate, SR.4647.

C.M.A.No.2367 of 2007

NG (CO)
RVL 18.02.2008

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