SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

The Commissioner of Customs vs C.Madhavan

The Commissioner of Customs vs C.Madhavan

SooperKanoon Citation : sooperkanoon.com/1620003

Court : Kerala

Decided On : Nov-30-2021

Judge : Honourable Mr.Justice S.V.Bhatti,Honourable Mr.Justice Basant Balaji

Appeal No. : Cus.Appeal/21/2018

Appellant : The Commissioner of Customs

Respondent : C.Madhavan

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE S.V.BHATTI & THE HONOURABLE MR.JUSTICE BASANT BALAJI TUESDAY, THE 30TH DAY OF NOVEMBER 2021 / 9TH AGRAHAYANA, 1943 CUS.APPEAL NO. 21 OF 2018 AGAINST THE ORDER IN OTHERS 21692/2015 OF CUSTOMS,EXCISE&SERVICE TAX APP.TRIBUNAL,BANGALORE APPELLANT/S: THE COMMISSIONER OF CUSTOMS CUSTOMS HOUSE,COCHIN-682009. BY ADV SRI.THOMAS MATHEW NELLIMOOTTIL, SC, CENTRAL RESPONDENT/S: C.MADHAVAN DEPUTY COMMISSIONER OF CUSTOMS(RETIRED),HOUSE NO.60/26,ST.FRANCIS XAVIER'S CHURCH ROAD,COCHIN-682018,KERALA. BY ADVS. SMT.CHANDINI G.NAIR

SRI.C.S.GOPALAKRISHNAN NAIR THIS CUSTOMS APPEAL HAVING COME UP FOR HEARING ON 30.11.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -2-

JUDGMENT

S.V. Bhatti, J.

Heard learned Senior Standing Counsel Mr Thomas Mathew Nellimoottil for Central Board of Indirect Taxes and Customs and Mr C S Gopalakrishnan Nair, learned counsel for respondent.

2. The instant appeal is under Section 130 of the

Customs Act 1962. The Commissioner of Customs is the appellant and Mr C Madhavan is the respondent. The appellant being aggrieved by the Final Order No.22982/2017 dated 08.12.2017 in Appeal No.C/21692/2015 of the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), South Zonal Bench, Bangalore, has filed the instant appeal.

-3- 2.1 The appeal filed by the appellant before the CESTAT was dismissed through the order impugned in the appeal and for appreciating the rival contentions we find it useful to excerpt the operative portion of the order the CESTAT which reads as follows:

> 3. We find that the total revenue involved in this case is less than Rs.10 lakhs. This falls within the monetary limits prescribed by Revenue by Circular F.No.390/Misc./163/2010-JC dt. 17/12/2015. In the light of the litigation policy, the appeal filed by the Revenue is not maintainable and hence is dismissed. Cross-objections also disposed of. (emphasis supplied)

3. A few background facts to appreciate the substantial

questions of law formulated by the appellant need to be stated. The Commissioner of Customs, through Annexure-A dated 13.03.2014 read with Corrigendum dated 22.04.2014, issued show-cause notice to as many as 15 individuals in respect of the search, seizure or recovery undertaken from Emirates flight EK- -4- 532 from Dubai to Cochin on 19.09.2013. The respondent is arrayed as Sl. No.14. At that point of time, respondent was working as Deputy Commissioner of Customs. One Anil Kumar, was working as Assistant Commissioner of Customs and shown

at Sl. No.15 in the show-cause notice. The Commissioner of Customs, through the order in Annexure-B, exercised the jurisdiction and power vested in him by Section 112 of the Customs Act. The operative portion of the order in Annexure-B dated 13.04.2015 deals with the discretion exercised by the Commissioner for or while levying the penalty on all the individuals shown in the show-cause notice dated 13.03.2014. We are concerned with the consideration given by the Commissioner to Mr Faiz T K etc including the respondent and Anil Kumar, which reads as follows:

(6) Shri. Faiz T.K, Shri. Ashraf K, Shri. Subair K, Shri. Abdull K.K., Shri. Ahmed Suhail, Faizal T.K, Shri. P.P. Sunil Kumar, Shr C.Madhavan and Dr. Anil Kumar - 5-

(i) I impose a penalty of Rs.5, 00, 00,000/- (Rupees Five Crore Only), o Shri. T.K.Faiz, under sections 112 (a) and (b) for his role in the smuggling of the total of 56 kilograms of gold.

(ii) I impose a penalty of Rs. 15,00,00,000/- (Rupees Fifteen Crore Only) on Shri. Ashraf Kallungal, under sections 112 (a) and (b) for his role in the smuggling of the total of 56 kilograms of gold.

(iii) I impose a penalty of Rs. 20,00,000/- (Rupees Twenty Lakh Only), on Shri. Subair Kallungal, under section 112 (b) of the Customs Act 1962

(iv) I impose a penalty of Rs. 50,00,000/- (Rupees Fifty Lakh Only), on Shri. Abdulla KoithanKandy, under section 112 (a) and

(b) of the Customs Act 1962

(v) I impose a penalty of Rs. 5,00,000/- (Rupees Five Lakh Only), on Shri Ahmed Suhail under section 112 (a) and (b) of the Customs Act 1962

(vi) I impose a penalty of Rs. 20,00,000/- (Rupees Twenty Lakh Only), on Shri. T.K.Faizal under section 112 (b) of the Customs Act 1962.

(vii) I impose a penalty of Rs. 1,00,000/- (Rupees One Lakh

Only), on Shri P.P. Sunil Kumar, Preventive Officer under section 112 (a) of the Customs Act 1962 (viii) I refrain from imposing penalty on Shri. C. Madhavan, Deputy Commissioner of Customs (Retired) and Shri.Anil -6- Kumar, Asst. Commissioner of Customs. (emphasis supplied)

The Department, after examining the extent to which the exercise of discretion in respect of the Officials of Customs Department is concerned, decided to file appeal before the CESTAT against the order dated 13.04.2015. The CESTAT, as narrated supra, dismissed the appeal filed by the Department by referring to the monetary limits stipulated to the Department for filing appeals before the CESTAT/High Courts/Supreme Court etc. Hence, the appeal.

4. Mr Thomas Mathew argues that the monetary limits

stipulated by the Circulars are not attracted to the case on hand. Elaborating his argument, it is stated, assuming hypothetically that the Department could successfully convince the CESTAT that complete exoneration or refraining from imposing penalty is illegal, amounts to refusing to exercise the -7-

jurisdiction vested in the Commissioner of Customs by Section 112 of the Act, then, the window opened for imposition of penalty, even if accepted as per the plain language of the Section, could be as much as Rs.16,76,93,517/-. Not that such a penalty should be imposed, in the case of hand, however, refusing to entertain the appeal when the larger question canvassed by the Department is: Whether the Commissioner is right in law in not imposing any penalty at all on Officers - C. Madhavan and Anil Kumar. Therefore, the fiscal limit referred in the Circulars has no application. If at all fiscal limits are to be taken into consideration, the case comes within the limits stipulated by all the Circulars issued from time to time. It is further brought to our notice that the appeal filed against Mr Anil Kumar is still pending before the CESTAT and the dismissal of the appeal filed, in the case of Madhavan, is unsustainable both in law and fact. The primary question before the Tribunal

-8- is not the duty, penalty or fine, but the question is one touching upon the jurisdiction of Commissioner of Customs under Section 112 of the Act, and the fiscal value has no role to play at this juncture of the adjudication.

5. Learned Counsel Mr Gopalakrishnan Nair opposes the

appeal in all fours. The first objection is that the Commissioner sitting in his armchair, appreciated the role played by each one of the conspirators and including the two Officers, upon being satisfied with the role of other two Officers, refrained from

imposing any penalty. According to him, the discretion resulted in imposition of zero penalty. Therefore, it is well within fiscal limit imposed in the Circular issued by the Central Government from time to time. Secondly, both C Madhavan and Anil Kumar had played no role in the entire episode, the dismissal of appeal by referring to monetary limit is justified in fact and does not warrant interference particularly having

-9- regard to the substantial questions of law raised by the Department. He prays for dismissing the appeal.

6. We have heard the learned Counsel and perused the

record. The questions formulated by the appellant are excerpted to take note on whether the ground now argued by the appellant is, in fact, set out, if so, whether the ground comes within the purview of this Court under Section 130 of the Customs Act.

> (1) Whether the Tribunal erred in holding that the revenue involved in this case is less than Rs.10 lakhs on the ground that no penalty has been imposed on the respondent, whereas per Section 112 of the Customs

Act, 1962 the penalty that could be imposed is an amount not exceeding the duty sought to be evaded on such goods i.e. Rs 16,76,93,517/- (Rupees Sixteen Crores Seventy six lakhs ninety three thousand five hundred and seventeen Only).

(2) Whether, the Tribunal erred in ignoring the fact that the

appeal filed by the department was for non-imposition of penalty' and that, if the appeal is allowed the respondent was liable to be imposed with penalty of an amount not exceeding -10- the duty sought to be evaded i.e. Rs 16,76,93,517/- (Rupees Sixteen Crores Seventy six lakhs ninety three thousand five hundred and seventeen Only).

(3) Whether, the Tribunal has erred in holding that the amount

involved in the case is less than Rs 10 Lakhs by ignoring the fact that as no penalty was imposed on the respondent by the adjudicating authority, the amount involved in the case cannot be quantified. 6.1 The circumstances preceding the decision in Annexure-B dated 13.04.2015 are stated to the extent required for disposing of the appeal. We are neither examining the merits nor involvement of any individual in the episode preceding the order in Annexure-B dated 13.04.2015. Substantial question no.3, as noted above, particularly refers to 'as no penalty was imposed on the respondent by the adjudicating authority, the amount involved in the case cannot be quantified'; there is no dispute on this aspect of the matter. -11- 6.2 Let us now revert to the circumstances of the case on

hand. The Commissioner, depending upon the role each one of the individuals covered in paragraph 6 of the order has played/exercised his jurisdiction, discretion and imposed penalty. As noted above, the penalty imposed on individuals dealt with in paragraph 6 of the order dated 13.04.2015 varies from Rs.15 crore to Rs.1 lakh. When it comes to subject Officers,

the Commissioner refrained from imposing penalties. Therefore, this begs the very question, namely, whether the Commissioner has properly and correctly exercised the jurisdiction vested in him by Section 112 of the Act. First question that may come out for consideration before the Tribunal is not whether the penalty imposed on a particular individual is justified etc., but, the question is whether the non-imposition of penalty on respondent is tenable and in -12-

accordance with law. In the particular circumstances of the case, the question for decision before the Tribunal is: Whether refraining from imposition of penalty is valid and legal? The question is de hors fiscal limits and pure question of law. The fiscal limits, unlike routine matters taken up by Tribunal, is not present in the case on hand. Therefore, by referring to fiscal limits, not entertaining the appeal filed by the appellant herein on the strength of the Circulars issued from time to time, is unsustainable and illegal.

Accordingly, question no.3 is answered in favour of the appellant and against the respondent. The order under appeal is set aside. Matter remitted to CESTAT for consideration and disposal in accordance with law, along with the appeal pending in the matter of Anil Kumar. It is also recorded that none of the

issues on merits between the parties is examined by us while

pronouncing the instant judgment. All the issues are left open -13- for decision by the Tribunal, untrammeled by the consideration of this Court in the instant judgment. Sd/- S.V.BHATTI JUDGE Sd/- BASANT BALAJI JUDGE jjj -14- APPENDIX OF CUS.APPEAL 21/2018 PETITIONER ANNEXURE ANNEXURE A TRUE COPY OF THE SHOW CAUSE CUM DEMAND NOTICE NO.S-L417A12013 DATED 13.03.2014 ANNEXURE B A TRUE COPY OF THE ORDER-IN-ORIGINAL BEARING SL. NO. COC-CUSTM-000-COM-01/15-16 DATED 13.04.2015

ANNEXURE C A TRUE COPY OF THE REVIEW ORDER

C.NO.VIII/48/42/2015 CCO (KZ) V DATED 20.07.2015 PASSED BY THE COMMITTEE OF CHIEF COMMISSIONER ANNEXURE D A TRUE COPY OF THE APPEAL NO.C/21692/2015 DATED 15.09.2015 FILED BY THE APPELLANTS BEFORE THE TRIBUNAL (WITHOUT EXHIBITS) RESPONDENT ANNXURE ANNEXURE R(A) A TRUE COPY OF F NO.390/MISC./116/2017 - JC

DT 22.8.2019 ISSUED BY THE CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com