(2014) 12 MAD CK 0206

In the Madras High Court

Case No : Civil Miscellaneous Appeal No. 3876 of 2008

Commissioner of Customs APPELLANT

Vs

Moriks Shipping and Trading (P) Ltd. RESPONDENT

Date of Decision : 05-12-2014

Acts Referred:
Customs Act, 1962 — Section 113(h)(2), 114(iii), 125

Citation : (2015) 317 ELT 3

Hon'ble Judges : R. Sudhakar, J;R. Karuppiah, J

Bench : Division Bench

Judgement

R. Sudhakar, J.

1. Aggrieved by the order of the Appellate Tribunal in dismissing the appeal filed by it, the Revenue is before this Court challenging the said order by filing the present appeal. This Court, vide order dated 16.12.08, framed the following substantial question of law for consideration :-

"Whether the Tribunal''s decision was justified in setting aside the penalty imposed on the first respondent by the adjudicating authority under Section 114(iii) of Customs Act, 1962, without considering the adverse observations made in the Order in Original dated 30.03.2006 on the CHA be correct in law, when the High Court of Delhi in the case of Satish Gupta Vs. Union of India (UOI) and Others, has justified the imposition of penalty on the CHA and held that the CHA is duty bound to exercise due diligence to ascertain the correct of information given by clients would be sustainable in law for imposing penalty on CHA?"

2. The facts of the present case disclose that the Custom House Agent (for short ''CHA'') has been mulcted with penalty of Rs.1,50,000/- (Rupees One Lakh Fifty Thousand only) in a case of mis-declaration by the exporter, who attempted to export ordinary salt under the guise of ''Organic Dye Intermediate G-Salt'' for the purpose of claiming drawback benefits for a declared value of Rs.64 Lakhs.

3. The brief facts of the case is that the goods, on the threshold of export, was subjected to a chemical analysis by the Department in its laboratory, and it was ascertained that the goods presented for export was common salt. Therefore, a case was framed against the exporter and the CHA. The original authority confiscated the goods under Section 113(h)(2) on the ground of mis-declaration of description and value of goods, but gave option of redemption to the exporter on payment of a fine of Rs.20,000/- under Section 125 of the Customs Act. Penalty was also imposed on the exporter and the CHA at Rs.5 Lakhs and Rs.1.5 Lakhs respectively.

4. The CHA successfully challenged the penalty before the first appellate authority which set aside the penalty imposed on the CHA. The Revenue, aggrieved by the said order, filed appeal before the Tribunal contending that penalty should be imposed on the CHA on the basis of the finding of the original authority. However, the Tribunal declined to accept the plea for imposition of penalty on the CHA holding that CHA had no knowledge of the mis- declaration by the exporter on the nature of goods attempted to be exported by the exporter for wrongful availment of drawback claim and, therefore, dismissed the appeal filed by the Department. Aggrieved by the said order of the Tribunal, the present appeal is filed by the Revenue before this Court.

5. Heard the learned standing counsel appearing for the Department and the learned counsel appearing for the 1st respondent.

6. Even at the very outset, it is evident from the order of the Tribunal that the goods were examined by the Customs Department in its laboratory, and analysis revealed that the goods were common salt instead of Organic Dye Intermediate G-Salt, as declared. Such being the case, this Court is baffled to note how penalty can be levied on the CHA. When the Department itself, only on the basis of the chemical analysis, was able to ascertain that the goods attempted to be exported was not common salt, how can a CHA be expected to know of the exact nature of the product at sight. In the above stated scenario, this Court has no hesitation to hold that the Commissioner (Appeals) and the Tribunal''s reasoning for setting aside the penalty imposed on the CHA is fully justified.

7. Further, the case of Satish Gupta (supra) relied on by the learned counsel for the appellant, does not apply to the facts of the present case. That is a case in which there is a clear finding that the CHA had knowledge and was aware of the nature of goods. In the present case, we find that the CHA does not bear knowledge about the nature of goods and there is no material to infer so.

8. In such view of the matter, this Court finds no reason to take a view different from the one taken by the Tribunal and, therefore, this appeal is liable to be dismissed. Accordingly, the substantial question of law is answered against the Revenue and in favour of the 1st respondent.

9. Finding no merits warranting interference with the order of the Tribunal, the appeal is dismissed. However, there shall be no order as to costs.

