

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16-12-2025

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CORAM

**THE HON'BLE DR.JUSTICE ANITA SUMANTH
AND
THE HON'BLE MRS.JUSTICE K. GOVINDARAJAN THILAKAVADI**

**CMA.No. 836 of 2018
and
CMP.No.6865 of 2018**

M/s.Antoine & Becourel Organic Chemical Co.
No.19, 1st Cross Street, VOC Nagar,
Anna Nagar (East),
Chennai – 600 102.

... Appellant

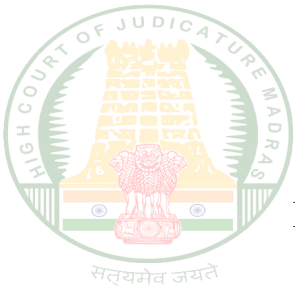
Vs

1.The Customs, Excise and Service Tax Appellate Tribunal,
Haddows Road,
Shastri Bhawan Annexe 1st Floor,
Chennai – 600 006.

2.The Commissioner of Customs (Airport & Air Cargo),
New Custom House,
Meenambakkam,
Chennai-600 027.

... Respondents

Prayer : Appeal filed under Section 130 of the Customs Act, 1962, against the order of the Customs, Excise and Service Tax Appellate Tribunal, Chennai in Final Order No.40676/2016 dated 29.04.2016 in C/41606/2014-SM.



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For Appellant(s):

Mr.B.Satish Sundar
for Mr.N.Balaji

For Respondent(s):

Mr.Mohana Murali, (for R2)
Senior Standing Counsel

R1 – Tribunal

JUDGMENT

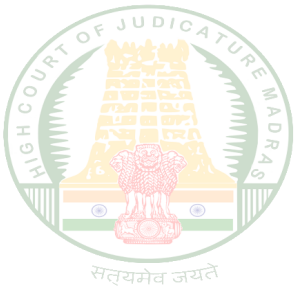
(Judgment of the Court was delivered by Dr.Anita Sumanth J.)

The substantial questions of law that had been admitted on 10.04.2018 are
as follows:

“1. Whether the Tribunal was correct in traversing beyond the scope of the appeal preferred by the appellant and pass the impugned order usurping the powers of the adjudicating authority to order the absolute confiscation of the goods, even when the adjudicating authority had allowed the re-export of the goods on payment of redemption fine imposed in the order impugned in the said appeal?

2. Whether the Tribunal was correct in holding that the appellant had committed fraud against the revenue, even when the dispute admittedly involved no demand for any customs duty, but only concerned the non-production of import license, when admittedly, no Bill of Entry for the clearance of said goods was filed under Section 46 of the Customs Act by the appellant?

3. Whether the Tribunal committed gross violation of principles of natural justice in not considering the provisions of Rule 41 of the Drugs and Cosmetic Rule, which permitted the Commissioner of Customs and adjudicating authority the power to permit re-export of the drugs imported which are of standard quality in the absence of the importer not being able to cure the defect by producing license to import the drug and by furthering



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the goods as prohibited for import to order its absolute confiscation?

4. Whether the Tribunal was right in ordering absolute confiscation in an appeal preferred by the appellant, without considering the grounds of appeal raised before it by the appellant, challenging the fine and penalty imposed by the adjudicating authority in permitting the re-export of the goods, which runs contrary to the principle of "no reformatio in peius.""

2. The appellant had suffered an order-in-original dated 28.03.2014 and in conclusion, the Commissioner of Customs issued the following directions:

'60. I find the consol agent M/s.DHL Logistics Pvt Ltd in their reply mainly contend that they have carried out the amendment on the request of the consignor as conveyed to them by their Chinese counterpart; that their act of this is in consonance with existing rules, that the revised invoices and other documents back dated as in the original import documents is merely a clerical error committed by an employee of DHL China; that indisputably the ownership and title to the goods did not pass to the consignee; they have admitted that it was an error that they had filed SEZ Bill of Entry with the revised documents without carrying out the amendment with chem Co. Ltd and Consignee name as M/s. Antoine and Becourel Organic Chemical Co., Chennai, seized from a truck bearing registration No.TN22 BE7952 which was found parked in import examination shed parking area of Air Cargo Complex, Chennai-27, in terms of Section 111(d) of Customs Act, 1962 read with the provisions of the Drugs and Cosmetics Act 1940 & and Drugs and Cosmetics Rules 1945. However as per Section 125(1) of Customs Act, 1962, I allow the said goods to be redeemed in lieu of confiscation for the purpose of re-export to the foreign supplier on payment of fine of Rs.7,00,000/- (Rupees Seven lakhs only).'

3. We have consciously not adverted to the facts as set out in the show



cause notice and in the order-in-original as they are unnecessary to deal with the substantial questions of law that have been admitted for resolution.

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4. Suffice it to say that the adjudicating authority had confiscated the consignment that was imported by the appellant in terms of Section 111(d) of the Customs Act, 1962 (in short 'Act') read with the relevant provisions of the Drugs and Cosmetics Act, 1940 and Rules. He also permitted redemption in lieu of confiscation under Section 125(1) of the Act for the purpose of re-export to the foreign supplier and quantified the fine payable at a sum of Rs.7,00,000/-.

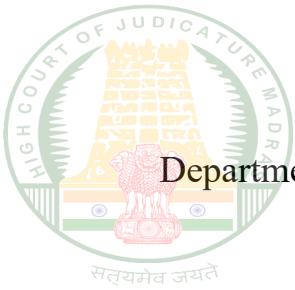
5. The appellant approached the Customs, Excise and Service Tax Appellate Tribunal (in short 'CESTAT'/'Tribunal') by way of first appeal challenging the confiscation, penalties and interest. It is relevant to note that the Customs Department did not challenge the order of the adjudicating authority permitting redemption, in terms of Section 129-A(2) that reads as follows:

'129-A. Appeals to the Appellate Tribunal

.....

(2) The Committee of Principal Commissioners of Customs or Commissioners of Customs may, if it is of opinion that an order passed by the Appellate Principal Commissioner of Customs or Commissioner of Customs under section 128, as it stood immediately before the appointed day, or by the Commissioner (Appeals) under section 128-A, is not legal or proper, direct the proper officer to appeal on its behalf to the Appellate Tribunal against such order:

6. Section 129-A(4) grants an opportunity to a party to file cross-objection as against the order of the Commissioner (appeals) and the



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Department did not avail this benefit as well. The provision reads as follows:-

“(4) On receipt of notice that an appeal has been preferred under this section, the party against whom the appeal has been preferred may, notwithstanding that he may not have appealed against such order or any part thereof, file, within forty-five days of the receipt of the notice, a memorandum of cross-objections verified in such manner as may be specified by rules made in this behalf against any part of the order appealed against and such memorandum shall be disposed of by the Appellate Tribunal as if were an appeal presented within the time specified in sub-section(3).”

7. Incidentally, Section 129DA provides for the power of suo motu revision by the Board or Principal Commissioner of Customs/Commissioner of Customs in certain cases, and states that either the Board or the appropriate Principal Commissioner/Commissioner of Customs may examine the record of any proceeding in which a subordinate adjudicating authority has passed any decision and may pass such order thereon as it/he thinks fit, after granting the assessee a reasonable opportunity of being heard.

8. None of the remedies as above have been availed by the Department and hence, the direction of the adjudicating authority permitting redemption in lieu of confiscation, had attained finality at that stage itself. In the aforesaid circumstances, the appellant is aggrieved by the conclusion of the Tribunal to the effect that not just confiscation, but even the direction for redemption in lieu thereof, should also be set aside.

9. The CESTAT has further observed that it is for the Chairman of the



CBE&C to deal with the matter as appropriate as it has been of the view that the redemption of the goods and re-export has caused detriment to the interests of justice.

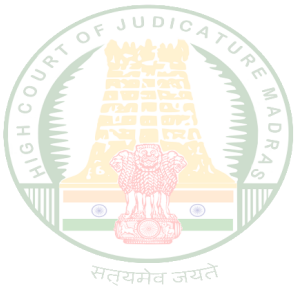
10. Mr.Satish Sundar, learned counsel appearing for the appellant would submit that the CESTAT had exceeded its jurisdiction by issuing such a direction, that too in an appeal filed by the assessee.

11. Per contra, Mr.Mohana Murali, learned Senior Standing Counsel appearing for R2 would draw our attention to the observations at paragraph 27 of the CESTAT's order, wherein the CESTAT makes scathing remarks as against the involvement of the appellant in a smuggling racket and also refers to evidence that has been gathered by the revenue to show that there was fraud committed against the Customs Department. Hence, according to him, there is no infirmity in the CESTAT's order.

12. We have heard both learned counsel.

13. The contents of paragraph 27 which offend the appellant read as follows:

27. The smuggling racket perpetuated smuggling in the past as is revealed from their conduct. Evidence gathered by Revenue unambiguously proved that both the appellant were contributory to the fraud committed against customs and they made an organised bid to be enriched at the cost of the nation. It is established principle of law that fraud and justice are sworn enemies. When the collusion and fraudulent design of the exporter, importer-appellant, Ramlal Jain and DHL surfaced, the impugned goods that came to India, became no man's property and confiscation being an action in rem, the dubious claim of ownership of



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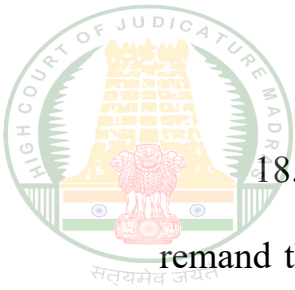
the goods at different point of time calls for absolute confiscation thereof without any leniency for redemption and re-export of the same. Accordingly, the order of the adjudicating authority requires to be set aside on such count and absolute confiscation of the impugned goods is hereby ordered. In the course of hearing Revenue informed that the impugned goods have already left India on payment of redemption fine. Therefore, it is left to the Chairman of the CBE&C to deal this matter as the Board may consider appropriate in the fitness of the circumstances of the case to protect interest of Revenue since the action of redemption of the goods and re-export has caused detriment to interest of justice.'

14. This is an appeal under Section 130 of the Act and the substantial question that arises for consideration in this case is as to whether the tribunal was right in setting aside a direction that had attained finality even at the stage of the order-in-original.

15. Section 129-A provides for appeals to the Appellate Tribunal and the appellant/assessee in this case has raised grounds of appeal in relation to the aspect of confiscation arising from the order-in-original.

16. The Department has neither filed an appeal under Section 129A(2) nor a memorandum of cross objections under Section 129A(4). Hence it has consciously chosen not to challenge the direction relating to redemption on payment of fine.

17. It is true that Section 129-B which deals with '*Orders of Appellate Tribunal*' vests in the tribunal, wide powers. The section says that the appellate tribunal may, after giving the parties a personal hearing, pass such orders thereon '*as it thinks fit*'.



18. In doing so, it may either confirm, modify or annul the order, or remand the matter to the file of the authority for fresh adjudication. However, the width of the powers that enure to the tribunal can relate only to those grounds of appeals laid by the party before it.

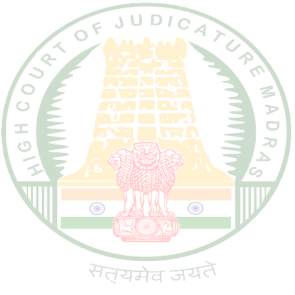
19. The statute provides for adequate remedies to an aggrieved party (both assessee and department) to put forth their grievances before the tribunal by way of appeal and cross objection. The Department may also undertake suo motu review of an order of a lower authority. In this case, the department has not availed of any of the available remedies and the only inference in law, is that it is not aggrieved by the direction of the authority for redemption and re-export.

20. In such circumstances, the direction of the tribunal setting aside the direction for redemption and re-export has attained finality at the stage of assessment, does not arise from the appeal filed by the assessee, and has hence been issued in excess of jurisdiction.

21. The questions of law are hence answered in favour of the assessee and against the Department. This appeal is allowed. No costs. Connected miscellaneous petition is closed.

(A.S.M.,J.) (K.G.T.,J.)
16-12-2025

vs
Index: Yes
Speaking order
Neutral Citation: Yes

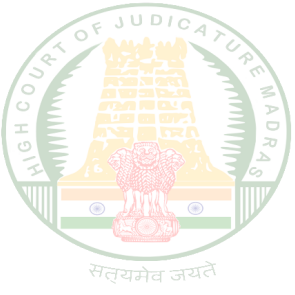


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To

1.The Customs, Excise and Service Tax Appellate Tribunal,
Haddows Road,
Shastri Bhawan Annexe 1st Floor,
Chennai – 600 006.

2.The Commissioner of Customs (Airport & Air Cargo),
New Custom House,
Meenambakkam,
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