

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **15.02.2017**

CORAM:

THE HONOURABLE MR.JUSTICE **R.SUBBIAH**

AND

THE HONOURABLE MRS.JUSTICE **J.NISHA BANU**

C.M.A.(MD).No.619 of 2012

M/s.Lovely Offset Printers,
43B Velayutham Road,
Sivakasi

: Appellant

Vs.

1.The Customs Excise and Service Tax Appellate Tribunal,
South Zonal Bench,
26-Haddows Road,
Chennai-600 006.

2.The Commissioner of Customs,
Custom House,
Tuticorin.

3.The Commissioner of Customs,
1-Williams Road,
Tiruchirapalli.

: Respondents

PRAYER: Appeal is filed under Section 35G of the Customs Act, 1944, against the Final Order No.189/12, dated 05.03.2012 in A.No.C/468/2004.

For Appellant : Mr.S.Renganathan

For Respondents : Mr.R.Nandakumar

JUDGMENT

[Judgment of the Court was delivered by **R.SUBBIAH, J.**]

The present Appeal has been filed as against the Final Order No.189/12, dated 05.03.2012 in A.No.C/468/2004 passed by the first respondent.

2. The brief facts, which are necessary to dispose of the present Civil Miscellaneous Appeal, are as follows:

The appellant herein viz., M/s.Lovely Offset Printers, Sivakasi, is a partnership firm, importing second hand printing machines. While so, 12 second hand machines were imported under various bills of entry all valued at Rs.1,37,42,290/- (CIF) through Tuticorin Port. On intelligence that the second hand printing machines were sold in violation of the Customs Act, 1962 and EXIM Policy, the officers of

Directorate of Revenue Intelligence visited the premises of the appellant and on verification, it revealed that out of 12 machines imported, only 4 machines were found available in the factory and the remaining 8 machines had been sold in the local market. Hence, a show cause notice was issued to the appellant. Thereafter, the case was adjudicated by the then Jurisdictional Commissioner of Customs, Trichy, vide order in Original No.45/2000, dated 30.05.2000 and ordered for confiscation of the eight machines already sold by the appellant under Section 111(o) of the Customs Act, 1962 with option to redeem the same on payment of fine under Section 125 of the Customs Act, 1962. Against the said order, the appellant herein filed an appeal before the first respondent. The first respondent, vide Final Order No.592-597 of 2002, dated 17.05.2002, remanded the case for *de novo* adjudication. The Commissioner of Customs, Tuticorin, consequent upon new jurisdiction, passed an order in Original No. 77/2004, dated 28.10.2004, imposing a penalty of Rs.1,30,000/- under Section 112(a) of the Customs Act, 1962. Against the same, the appellant filed an appeal before the CESTAT, Chennai and the Tribunal dismissed the petition vide Final Order No.189/2012, dated 05.03.2012. Hence, the present Civil Miscellaneous Appeal.

3. The only contention put forth by the learned counsel for the appellant in this appeal is that the appellate authority originally remitted the matter in Final Order No.592-597 of 2002, dated 17.05.2002 for *de novo* adjudication. The Commissioner of Customs, on completion of *de novo* enquiry, imposed a penalty of Rs.1,30,000/- under Section 112(a) of the Customs Act, 1962. Originally, when the order was passed by the Commissioner of Customs, Trichy, vide Order in Original No.45/2000, dated 30.05.2000, no penalty was levied. The order of remand was passed by the first respondent on 17.05.2002 only on the appeal filed by the appellant. Under such circumstances, the second respondent ought not to have imposed the penalty. Hence, the appellant has filed an appeal before the first respondent. But, without considering the same, the said appeal was dismissed by order dated 05.03.2012, which is impugned herein. Thus, the appellant sought for setting aside the order passed by the first respondent.

4. Per contra, the learned counsel for the respondents, by relying upon the unreported judgment delivered by the a Division Bench of this Court dated **02.09.2015, in C.M.A.(MD)No.618 of 2012 in the case of M/s.The Mehta Fine Arts vs. The Customs,**

Excise and Service Tax Appellate Tribunal, contended that there is no bar on the adjudicating authority in a *de novo* proceedings to determine the quantum of fine or penalty. Therefore, there is no necessity to interfere in the order passed by the appellate authority. Thus, he sought for dismissal of the present Appeal.

5. Keeping in mind the submissions made by the learned counsel appearing on either side, we have carefully gone through the entire materials available on record.

6. The only submission made by the learned counsel for the appellant is that originally when the order was passed on 30.05.2000, the third respondent has not imposed any penalty. Subsequently, the appellate authority has remitted the matter by order dated 17.05.2002 for *de novo* adjudication. In the *de novo* proceedings, penalty was imposed by the second respondent. The matter was remitted only for the purpose of *de novo* adjudication. However, in the *de novo* proceedings, penalty was imposed on the appellant. To sum up, the submission of the learned counsel for the appellant is that the order imposing penalty is not legally sustainable. However, we are not inclined to accept the said submission of the learned counsel for the

appellant. In fact, in the unreported judgment relied upon by the learned counsel for the respondents delivered in **C.M.A.(MD)No.618 of 2012**, cited *supra*, the Division Bench has held as follows:

"5. There is no bar on the adjudicating authority, in a de-novo proceedings, to determine the quantum of fine or penalty. The fine and penalty imposed has been set aside and the matter is live for re-adjudication. Hence earlier order imposing fine or penalty does not have any relevance. The adjudicating authority, at its discretion, may impose appropriate fine or penalty. It does not matter whether the proceedings have been initiated afresh or heard by way of de-novo proceedings on the orders of the Tribunal. Question of challenging enhancement of penalty does not arise in a case of this nature, where the adjudication order itself has been set aside in its entirety and the matter remanded back to the original authority for re-adjudication, namely de-novo enquiry. We find no provision of law that bars the adjudicating authority from imposing fine or penalty as he may deem fit in

the facts and circumstances of the case. In view of the above, the substantial questions of law are answered in favour of the Revenue."

7. Hence, applying the ratio laid down in the above mentioned case, the present Civil Miscellaneous Appeal is liable to be dismissed and accordingly, dismissed. No costs.

[R.P.S.J.,] & [J.N.B.J.,]

15.02.2017

Index : Yes/No

Internet : Yes/No

SML

To

The Record Keeper,

Vernacular Section,

Madurai Bench of Madras High Court,

Madurai.

R.SUBBIAH, J.

AND

J.NISHA BANU, J.

SML

JUDGMENT MADE IN

C.M.A.(MD).No.619 of 2012

Dated: 15.02.2017