CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, CHENNAI

COURT HALL - I

Customs Appeal No. 40927 of 2015

(Arising out of Order-in-Original No.11/2014 dated 30.09.2014
passed by the Commissioner of Customs, Trichy)

Kamal Jain **Appellant**
Post Box No.4, Mettur Dam,
Salem District, Tamilnadu – 636 402

Vs.

Commissioner of Customs **Respondent**
No.1, Willams Road, Cantonment,
Tiruchirapalli – 620 001.

APPEARANCE:

Shri Hari Radhakrishnan, Advocate for the Appellant
Shri R. Rajaraman, AC (AR) for the Respondent

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Hon'ble Shri P. Dinesha, Member (Judicial)
Hon'ble Shri Vasa Seshagiri Rao (Technical)

Final Order No. 41157/2024

Date of Hearing/Decision: 07.08.2024

Per P. Dinesha,

This appeal is filed by the appellant against the Order-in-Original No.11/2014 dated 30.09.2024. The appellant was the Head, Finance of the importer firm, namely Malco Energy Ltd., Salem and by this appeal he has challenged the imposition of penalty of Rs.55,00,000 under Section 112 (a) of the Customs Act 1962.

2. When the matter was taken up for hearing, Shri. G. Krishnamurthy Ld. Advocate, submitted that the main issue of classification of coal in the batch of appeals including that of Malco Energy Ltd., in which the Chennai Bench vide its Final Order Nos. 43295 – 43328/2017, has remanded the matter back to the file of adjudicating authority. He would also submit that the very same issue is the subject matter of appeal even before the Hon'ble Apex Court. Further, in the light of the main matter having been remanded back to the file of original authority, the present case of the appellant may also be remanded since the original common order stands set aside by this Bench.

3. Per contra Shri. R. Rajaraman Ld. Assistant Commissioner though relied upon the findings in the impugned order, but however concurred with the plea of the advocate that the main matter has been set aside to the file of the original authority for de novo adjudication.

4. We have carefully considered the rival contentions and have also perused the impugned order; we have also gone through the Final Order of this Bench referred to by the Ld. Advocate during the course of arguments. We are satisfied that the original authority had passed a common order in

respect of the present appellant before us now and also the firm Malco Energy Ltd., Salem in which the appellant here was the Head, Finance and since the said order stands set aside for de novo adjudication, hence, the penalty imposed on the appellant before us does not survive. Hence, we deem it appropriate to set aside the impugned order insofar as the present appellant is concerned and remit the matter back to the file of the original authority to pass a de novo order in accordance with law. The main issue in respect of the firm Malco Energy Ltd., is admittedly the classification of coal and hence, the original authority shall await the verdict of the Hon'ble Supreme Court as directed by this Bench in its Final Order Nos. 43295 – 43328/2017 dated 20.12.2017 and only thereafter can he consider the leviability or otherwise of penalty under Section 112 (a) on this appellant.

5. Resultantly, we set aside the impugned order and allow the appeal with the above directions. The appeal is disposed of on the above terms.

(Order pronounced in open court)

(VASA SESHAGIRI RAO)	(**P. DINESHA**)
Member (Technical)	Member (Judicial)

psd