

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 22ND DAY OF MAY 2015/1ST JYAISHTA, 1937

WP(C).No. 13298 of 2008 (G)

PETITIONER :

**V.JAYAKUMAR , 'SAROJ' THEVALLY
KOLLAM -9**

**BY ADVS.SRI.GEORGE JACOB (JOSE)
SMT.MAREENA JOSEPH JOSEPH**

RESPONDENTS :

**1. THE APPELLATE TRIBUNAL FOR FOREIGN,
EXCHANGE, JANAPATH BHAWAN, 4TH FLOOR B WING
NEW DELHI.**

**2. THE DEPUTY DIRECTOR OF ENFORCEMENT,
ENFORCEMENT DIRECTORATE, GOVERNMENT OF INDIA,
SOUTH ZONE, SASTRI BHAWAN III FLOOR III BLOCK
26 HADDOWA ROAD, CHENNAI-6**

**3. THE DEPUTY TAHSILDAR,
REVENUE RECOVERY KOLLAM**

**4. THE REGISTRAR, APPELLATE TRIBUNAL FOR
FOREIGN EXCHANGE, JANAPATH BHAWAN 4TH FLOOR,
B WING, NEW DELHI.**

**R1 & R2 BY ADV. SRI.P.PARAMESWARAN NAIR,ASST.SOLICITOR
R1,R2 & R4 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL
R1,R2 & R4 BY ADV. SRI.M.RAJEEV, ADDL.CGSC
R3 BY GOVERNMENT PLEADER SRI.S. JAMAL.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 22-05-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

bp

APPENDIX

PETITIONER'S EXHIBITS :

- P1: COPY OF THE ORDER NO. DD/MAS/154/91 DT 12/8/1991 OF THE R2.
- P2: COPY OF THE MEMORANDUM OF APPEAL.
- P3: COPY OF THE COMMUNICATION RECEIVED FROM THE R1 APPELATE BOARD.
- P4: COPY OF THE JUDGMENT DT 20/2/2003 IN OP 6036/2003-R.
- P5: COPY OF THE COMMUNICATION DT 29/12/2005.
- P6: COPY OF THE LETTER DT 9/1/2006 OF THIS PETITIONER.
- P7: COPY OF THE COMMUNICATION DT 13/1/2006 OF THE R4.
- P8: COPY OF THE ARGUMENT NOTES DT 15/5/2006 SUBMITTED BY THE PETITIONER.
- P9: COPY OF THE RECEIPT ISSUED BY THE SPEED POST COUNTER ON 16/5/2006.
- P10: COPY OF THE RECEIPT ISSUED BY THE SPEED POST COUNTER EVIDENCING ADDRESSING THE POSTAL ARTICLE TO THE R1.
- P11: COPY OF THE ORDER OF THE R1 DT 26/11/2007.
- P12: COPY OF THE APPLICATION DT 16/12/20076 ALONG WITH STAY APPLICATION.
- P13: COPY OF THE NOTICE DT 28/5/2008.

RESPONDENT'S EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

K. VINOD CHANDRAN, J

W.P(C) No. 13298 of 2008

Dated this the 22th day of May, 2015

J U D G M E N T

The petitioner is aggrieved with Ext.P11 order which the petitioner contends is passed ex-parte. The merits of the matter is not the subject matter of challenge. The appeal was directed against the adjudication order No. DD/MAS/154/91 dated 12.08.1991 passed by the Deputy Director, Directorate of Enforcement. The petitioner had filed the appeal before the Tribunal and had also prayed for waiver of pre-deposit.

2. The petitioner subsequent to the filing of the appeal approached this Court with a writ petition purportedly for consideration of appeal without insisting for pre-deposit. An interim order was passed in the above writ petition produced at Ext.P4. Ext.P4 directed deposit of ₹25,000/- and consideration of the appeal without insisting for pre-deposit. The petitioner is also said to have filed a written statement before the appellate Tribunal

produced at Ext.P8. The appellate Tribunal has specifically noticed in Ext.P11, that the appellant herein consistently failed to appear on the various dates in which appeal was posted and eventually the appellate order was passed. The appellate order at Ext.P11 specifically refers to the absence of appellant on 2.1.2006, 13.1.2006, 23.5.2006, 26.10.2006 1.2.2007, 30.04.2007 and 22.8.2007. In such circumstance, there is no merit in the contention taken up by the petitioner that the appeal was decided without hearing the petitioner. It is to be specified that the petitioner had in fact, approached this Court with a prayer for consideration of appeal without insisting of pre-deposit and had later on after complying with the condition as stipulated in Ext.P4 interim order, failed to appear before the appellate authority.

3. The case put forth by the petitioner as is indicated in Ext.P11 order is that the statement filed before the customs authorities by the petitioner was under coercion. It was also

contended that the appellant was convicted by the Criminal Court for identical reason and he could not be penalised again for the very same reason. Both the contentions are unsustainable and is devoid of any substantiation. The case was one of a false declaration more specifically import having been effected of snakeskins on a declaration of import of cashew kernels. The allegation of smuggling having been proved, on facts, this Court is of the opinion that the order in appeal cannot at all be interfered on merits too.

In such circumstance, the writ petition would stand dismissed. No costs.

Sd/-
(K. VINOD CHANDRAN, JUDGE)

jma

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P.A to Judge