IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.4.2015

CORAM :

The Honourable Mr.Justice V.RAMASUBRAMANIAN
and
The Honourable Ms.Justice K.B.K.VASUKI

Civil Miscellaneous Appeal No.925 of 2015 and M.P.No.1 of 2015

Mr.Stephen Rosario, Proprietor,
Zandra Trading Company,
Puducherry-13. ...Appellant

Vs

1.The Commissioner of Customs
(Seaport-Export), Custom House,
6, Rajaji Salai, Chennai-1.

2.The Customs, Excise & Service Tax
Appellate Tribunal, South Zonal
Bench, Chennai-6. ...Respondents

APPEAL under Section 130 of the Customs Act against the order No. 40506/2015 dated 30.3.2015 in Appeal No.C/41140/2014-DB passed by the second respondent.

For Appellant : Mr.Hari Radhakrishnan
For Respondents 1 & 2 : Mr.K.Mohanamurali SCGSC

JUDGMENT WAS DELIVEREDY BY V.RAMASUBRAMANIAN,J

The appellant has come up with the above appeal challenging a condition imposed by the second respondent Tribunal, directing the appellant to deposit a sum of Rs.10 lakhs for entertaining an appeal against the order of the Commissioner.

2. Heard Mr.Hari Radhakrishnan, learned counsel for the appellant. Mr.K.Mohanamurali, learned Senior Central Government Standing Counsel takes notice for the respondents.

3. The export consignment of 12 MTs of cargo declared as industrial salt was detained by the Intelligence, in the Container Freight Station at Maduravoyal, Chennai. The consignment had actually been brought for export by a company known as Zandra Trading Company of Puducherry.

4. After chemical analysis, the Department issued a show cause notice. The appellant was also detained under the COFEPOSA, but the order of detention was set aside. Eventually, an order in original was passed by the Commissioner of Customs on 29.3.2011 directing confiscation of the goods valued at Rs.82,83,633/- under Section 113 (d) and (i) of the Customs Act, 1962 read with Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992. The appellant was given an option to redeem the goods upon payment of redemption fees of Rs.20 lakhs. A fine of Rs.40 lakhs under Section 114(i) and another fine of Rs.5 lakhs under Section 114(AA) of the Customs Act were also imposed, apart from three other penalties.

5. As against the order in original, the appellant filed two appeals in C/S/155/2011 and C/192/2011 before the second respondent Tribunal. The second respondent Tribunal set aside the said order on the ground of failure of the first respondent to give adequate opportunity of hearing. After remand, the Commissioner passed a fresh order titled as de novo adjudication order on 1.4.2014. By the said order, the Commissioner directed permanent confiscation of the goods and imposed a penalty of Rs.20 lakhs under Section 114(i) and Rs.2 lakhs under Section 114(AA) of the Act.

6. Finding that the remedy became much worse than the disease, the appellant filed a fresh appeal before the second respondent Tribunal along with an application for waiver of pre-deposit condition. On the said application, the Tribunal has now passed an order on 30.3.2015, directing the appellant to deposit a sum of Rs.10 lakhs within eight weeks. Aggrieved by the said order of the Tribunal, the appellant is before us.

7. At the time when the appellant filed an appeal against the first order in original dated 29.3.2011, the Tribunal entertained the appeal without any pre-deposit condition and disposed of the appeal at that stage itself. As a matter of fact, the appellant was better off with the first order in original dated 29.3.2011. At that time, he had the option of redeeming the goods upon payment of Rs.20 lakhs. The goods were worth Rs.82,83,633/-.

8. Today, the appellant is worse off and the Department is better off with an order directing permanent confiscation of the goods worth Rs.82,83,633/-. Therefore, the question of hardship that could be caused to the appellant has not been examined in the proper perspective by the Tribunal in the impugned order. In such circumstances, we are of the view that the order of the Tribunal could be modified, so that the scales are kept at even.

9. In view of the above, the civil miscellaneous appeal is allowed and the order of the Tribunal is modified directing the appellant to deposit a sum of Rs.5,00,000/- (Rupees five lakhs only) within a period of eight weeks. Upon such deposit, the appeal shall be entertained and disposed of on merits. Consequently, the above MP is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Commissioner of Customs
(Seaport-Export), Custom House,
Chennai-1.

2.The Customs, Excise & Service
Tax Appellate Tribunal, South Zonal
Bench, Chennai-6.

+ 1 cc to Mr.Hari Radhakrishnan, Advocate SR.21931
+ 1 cc to Mr.K.Mohanamurali, Advocate SR.21599

TEJ(CO)
EU 29.04.2015

CMA.No.925 of 2015
and MP.No.1 of 2015