IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2015

CORAM:

THE HON'BLE MR. JUSTICE R. MAHADEVAN

W.P.No.33285 of 2015
and M.P.No.1 of 2015

Shri. Payangadi Moidu Mohammed Ali [Petitioner]

Vs

1 The Commissioner of Appeals-I
Rajaji Salai Chennai-1.

2 The Additional Commissioner of
Customs (AIR) , Office of the Commissioner of
Customs Chennai-IV Chennai-27. [Respondents]

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari calling for the records in respect of the impugned order in Appeal No. C.Cus.I No.91/2015 dated 05.03.2015 issued by the Commissioner (Appeal-I) the 1st Respondent herein and to quash the same as null and void.

For petitioner : Mr.S.Siva Shankar
For respondents: Mr.K.Mohana Murali,
Standing Counsel

O R D E R

Heard the learned counsel appearing for the petitioner and Mr.K.Mohana Murali, learned Standing Counsel for the respondents.

2. This writ petition is filed under Article 226 of the Constitution of India seeking to quash the impugned order in Appeal No. C.Cus.I No.91/2015 dated 05.03.2015 issued by the Commissioner (Appeal-I) the 1st Respondent herein.

3. The petitioner was working as a supervisor in a restaurant in Jeddah, Saudi Arbia; on 27.06.2014, he started from Jeddah and reached Chennai; that when he was passing through Green Channel with his hand bag, he was stopped by a person in plain clothes who later identified himself as Customs Officer and on checking it came to light that the petitioner brought gold worth Rs.65,61,670/-. The issue involved in this writ petition is with regard to absolute confiscation and

imposition of penalty on the petitioner carrying gold in the form of two gold bars weighing 1000 grams each of 24 karat purity and 40 Nos. gold coins weighing 8 grams each of 22 karat, the value of which is Rs.65,61,760/- and the penalty imposed is Rs.5,00,000/- under Section 112(q) of the Customs Act, 1962. Against the confiscation order passed by the Joint Commissioner of Customs (Adjudication-AIR) dated 24.01.2015, the petitioner preferred an appeal before the Commissioner of Customs (Appeals-I) in No.C4-I/35/O/2015-Air and the appellate authority has rejected the same, by order dated 05.03.2015. Challenging the same, this writ petition is filed.

4. The learned counsel for the petitioner would submit pursuant to the letter of the petitioner dated 13.02.2015, requesting for cross-examination of the Mahazar witnesses and the Superintendent of Customs (AIU), the witnesses who signed the mahazar, the petitioner was informed to file a proper petition for the same and accordingly, he has filed a petition before the Commissioner of Customs (Appeals), Chennai, on 24.02.2015. The petitioner again, has also made an application for cross examination on 16.03.2015 without proper knowledge of Commissioner's rejection of the appeal as the order was despatched on 17.03.2015. According to the learned counsel the Commissioner of Appeal is not empowered to reject the request of the petitioner for Cross Examination in violation of Rule 5 of Customs Act, 1962. He has also brought to the notice that as against the order of the Commissioner of Appeals, the petitioner preferred an appeal before the CESTAT in C/40694/2015 and the same is pending consideration. In the meantime, the petitioner has filed an application in No.C/EH/40307/2015, which was allowed and the appeal was posted for hearing on 10.09.2015. It is the contention of the learned counsel for the petitioner, seeking cross examination of certain witnesses is pending consideration before the Commissioner of Appeals, the same may be directed to be disposed of within a time frame.

5. The learned Standing Counsel on the other hand submitted that the writ petition is not maintainable since the petitioner already challenged the impugned order before the appellate authority.

6. Heard both sides. Admittedly, the Commissioner of Appeals dismissed the appeal filed by the petitioner and as against the same, further appeal before the CESTAT has been filed. Hence, the impugned order cannot be questioned in the writ petition. Any further relief to be sought for is to be placed only before the CESTAT only. Since the appeal itself is rejected by the Commissioner of Appeals, the question of cross-examination to be considered by the Commissioner of Appeal at this stage cannot be countenanced.

7. In view of the above, without going into the merits of the matter, the CESTAT is directed to take up the appeal for hearing along with other petitions if any and the same be disposed of within a period of eight weeks from the date of receipt of a copy of this order, after affording due opportunity to the petitioner.

The writ petition is disposed of accordingly. No costs. Connected miscellaneous petition is closed.

rg

s/d-
Assistant Registrar(CS-V)

True Copy

Sub-Assistant Registrar

To

1 The Commissioner of Appeal-I
Rajaji Salai Chennai-1.

2 The Additional Commissioner of
Customs (AIR) Office of the Commissioner of
Customs Chennai-IV Chennai-27.

+ 1 cc to Mr.Sivashankar, Advocate SR 68213

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