In the High Court of Judicature at Madras

Dated : 24.3.2016

Coram :

The Honourable Mr.Justice V.RAMASUBRAMANIAN

and

The Honourable Mr.Justice N.KIRUBAKARAN

Civil Miscellaneous Appeal No.102 of 2016
and CMP.No.1011 of 2016

J.Anand ...Appellant

Vs

1.The Commissioner of Customs,
Tiruchirapalli.

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

APPEAL under Section 130 of the Customs Act to set aside the order dated 4.11.2015 made in C/Stay/40623/2013 in C/40913/2013 on the file of the second respondent.

For Appellant : Mr.Satish Chandrasekaran

For Respondent-1 : Mr.A.P.Srinivas

Judgment was delivered by V.RAMASUBRAMANIAN,J

This appeal, filed under Section 130 of the Customs Act, arises out of a condition imposed by the Tribunal in an application for waiver.

2. Heard Mr.Satish Chandrasekaran, learned counsel for the appellant and Mr.A.P.Srinivas, learned Senior Panel Counsel for the first respondent/ Department.

3. It appears that based upon the Intelligence information, a vehicle was intercepted on 10.11.2011 near Velankanni and a parcel kept sealed below the floor mat of the left front seat of the vehicle was seized. Six more parcels were also found sealed in the right side arm rest of the same seat. The parcels

contained 156 numbers of gold biscuits with foreign markings weighing about 15.600 Kgs. The appellant herein was in the vehicle at the time of seizure.

4. Therefore, an Order in Original was passed on 18.1.2013 directing the confiscation of the gold biscuits and imposing a penalty of Rs.2,50,00,000/- upon the appellant as well as upon another person. The appellant as well as the other person filed appeals along with applications for stay and waiver before the Tribunal. The Tribunal granted total waiver in favour of the other person, but directed the appellant to pay Rs.25 lakhs within 8 weeks. This constituted merely 10% of the penalty awarded by the Order in Original.

5. Contending that the very show cause notice was defective and without jurisdiction and that therefore, the pre-deposit condition ought to have been waived in entirety, the appellant is before us.

6. The learned counsel for the appellant took pains to contend that the Adjudicating Authority passed the order based upon the statements recorded in Tamil under Section 108 of the Customs Act and that he had no occasion to understand its contents. According to the learned counsel, the show cause notice itself was without jurisdiction.

7. But, all the above contentions revolve around the merits of the case. In an application for waiver, the Tribunal is concerned only with the question of hardship. The Supreme Court made it clear that even financial hardship is not the hardship that the Tribunal should be solely concerned about while considering the application for waiver. In the light of the above, we find no substantial question of law to entertain the appeal.

8. Accordingly, the civil miscellaneous appeal is dismissed. No costs. Consequently, the above CMP is also dismissed.

9. Since the time limit for making the pre-deposit has expired on 13.1.2016, we grant time upto 30.4.2016 to make the pre-deposit.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

RS

To

1.The Commissioner of Customs, Tiruchirapalli.

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

1 cc to Mr.A.P. Srinivas, Advocate, Sr. 18755

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