

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE D.KRISHNA KUMAR

W.A.Nos.792 and 793 of 2011
M.P.Nos.1 and 1 of 2011

1. The Chief Commissioner of Customs,
Customs House, No.60, Rajaji Salai,
Chennai 600 001.
2. The Commissioner of Customs (Airport),
Anna International Airport,
Meenambakkam, Chennai 600 027.
3. The Assistant Commissioner
of Customs (Airport Administration),
O/o. Commissioner of Customs,
New Customs House,
Meenambakkam, Chennai-27. ... Appellants in both W.As.,
Respondents

versus

Mr.Rajendran Thangam,
Represented by its Power Agent,
A.K.Thanigaivel ... Respondent in W.A.No.792/11 /
Petitioner

Mr.Kannan Karuppasamy, सतयमेव जयते
Represented by its Power Agent,
K.R.Ramesh .. Respondent in W.A.No.793/11 /
Petitioner

Writ Appeals are filed under Clause 15 of the Letter Patent,
against the order, made in W.P.Nos.2594 and 2595 of 2011, dated
16.03.2011.

WP 2594 of 2011: Petition filed under Article 226 of
Constitution of India, seeking for a writ of certiorarified
mandamus, calling for the records of the 3rd Respondent herein
made in F.S.Misc.104/07 (II)-Airport-Admn.Dated 24.12.2010
quash the same in so far as it relates to deposit of

Rs.3,00,000/- being the enhanced penalty amount of Rahamathullah for release of the of Gold Chains weighing 297 grams and valued at Rs.3,59,073/- which is the subject matter of adjudication in O.S.No.1381/2009-AIU and direct the 2nd & 3rd Respondent to release the aforesaid articles without any condition for the purpose of re-export.

WP 2595 of 2011: Petition filed under Article 226 of Constitution of India, seeking for a writ of certiorarified mandamus, calling for the records of the 3rd Respondent herein made in F.S.Misc.104/07 (II)-Airport-Admn.Dated 24.12.2010 quash the same in so far as it relates to deposit of Rs.3,00,000/- being the enhanced penalty amount of Rahamathullah for release of the of Gold Chains weighing 310 grams and valued at Rs.3,74,790/- which is the subject matter of adjudication in O.S.No.1378/2009-AIU and direct the 2nd & 3rd Respondent to release the aforesaid articles without any condition for the purpose of re-export.

For Appellants : Mr.A.P.Srinivas,
Senior Standing Counsel for CCE & ST

For Respondents : Mr.B.Sathish Sundar

COMMON ORDER

(Common order of the Court was made by S.MANIKUMAR, J.)

Writ Appeals are directed against the orders, made in W.P.Nos.2594 and 2595 of 2011, dated 16.03.2011, by which, this Court has passed the following orders,

"12. In view of the averments made on behalf of the petitioner, as well as the respondents and in view of the submissions made on behalf of the parties concerned and on a perusal of the records available and on considering the decisions cited supra, this Court finds it appropriate to set aside the impugned order of the third respondent, dated 24.12.2010, in so far as it relates to the deposit of Rs.3,00,000/-, being the enhanced penalty imposed on one Rahamathullah, for the release of the gold chains and to direct the second and the third respondents to release the goods in question for the purpose of re-exporting the same, without imposing any conditions, as per the provisions of the Customs Act, 1962. The respondents have not been in a position to show as to how the petitioners would be liable to pay the enhanced penalty imposed on

Rahamathullah. Further, there is no finding that the goods in question belongs to Rahamathullah. It is also noted that the order of the Commissioner of Customs (Appeals), Chennai, dated 5.2.2010, had become final. In such circumstances, the petitioner need not be compelled to avail the appellate remedy, available under the provisions of the Customs Act, 1962."

2. Record of proceedings shows that both the Writ Appeals have been admitted on 18.05.2011.

3. On this day, when the matter came up for hearing, on instructions, Mr.A.P.Srinivas, learned Senior Standing Counsel for Customs and Central Excise Department, submitted that in compliance of the orders in Appeal Nos.C.Cus.167 to 181, dated 05.02.2010, 15 passengers referred therein, including the respondents on the present appeals, have paid re-export fine and personal penalty, imposed on them. He further submitted that confiscated gold jewellery was allowed for re-export on 27.07.2011.

4. In view of the above, we are not inclined to advert to the merits of the appeals. Accordingly, both the Writ Appeals are disposed of. Right, if any, to the respondents, to seek for refund, is subject to the statutory provisions.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

skm

1 cc to Mr.B.Sathish Sundar, Advocate, sr.38626

1 cc to Mr.A.P.Srinivas, Advocate, sr.38889

W.A.Nos.792 and 793 of 2011
M.P.Nos.1 and 1 of 2011

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kra 05.08.2016