IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.4.2016

CORAM :

The Honourable Mr.Justice V.RAMASUBRAMANIAN

and

The Honourable Mr.Justice M.V.MURALIDARAN

Writ Appeal No.507 of 2016
and
CMP.Nos.6942 and 6943 of 2016

1.M/s.India Sales Corporation,
A-19/20, Madras Export
Processing Zone, Chennai-45
by its Partner

2.Tayeb Haroon, A-19/20, Madras
Export Processing Zone,
Phase-II, Kdaperi, Chennai-45 ...Appellants

Vs

1.The Additional Commissioner of
Customs (Appraising), office of the
Commissioner of Customs (Air Port
& Air Cargo Complex), Chennai-27.

2.The Commissioner of Customs
(Appeals), Custom House,
Chennai-1. ...Respondents

APPEAL under Clause 15 of the Letters Patent against the order dated 13.3.2015 made in M.P.No.1 of 2015 in W.P.No.5257 of 2013. Petition praying that in the circumstances stated therein and in the affidavit filed therewith, the High Court will be pleased to modify the order of this court dt. 26.11.2014 and made in WP.5257/13 by treating a sum of Rs.17.07,777/- being the revenue collected from auctioned goods as sufficient compliance of pre-deposit for hearing the appeal by the R2 or in to grant sufficient time to mobilize the balance amount

WP.No.5257 of 2013: Petition presented under act 226 of the mandamus calling for the records of the 2nd respondent made in Interim Order dated 29.1.2013 in F.No.C/50/444 & 442/O/2012-Air quash the same and direct the said respondents to hear and dispose of the main appeal on the merits without insisting on the condition of pre deposit of duty and penalty amounts

For Appellants : Mr.B.Satish Sundar
For Respondents : Mr.A.P.Srinivas

Judgment was delivered by V.RAMASUBRAMANIAN,J

The writ appeal arises out of an order passed by the learned Judge refusing to modify his earlier order passed in common in two writ petitions.

2. Heard Mr.Satish Sundar, learned counsel for the appellants. Mr.A.P. Srinivas, learned Standing Counsel takes notice for the respondents.

3. The appellants herein filed a writ petition in W.P.No.5257 of 2013 challenging an order passed by the Commissioner of Customs (Appeals), imposing a pre-deposit condition for entertaining a statutory appeal filed by the appellant. There was yet another writ petition filed by a company by name M/s.Aswath Chemicals Private Limited, in which, the second appellant herein was a Director. That company has filed a writ petition in W.P.No.5256 of 2013. Both the writ petitions were disposed of by a learned Judge by a common order dated 26.11.2014. By the said order, the penalty levied on M/s.Aswath Chemicals Private Limited and the second appellant herein, were stayed until the appeal was heard and disposed of by the Commissioner. But, in so far as the writ petition filed by the first appellant is concerned, the learned Judge directed the entire penalty to be deposited.

4. Instead of filing either an appeal against the said order or a review against the said order, the appellants herein filed a miscellaneous petition in M.P.No.1 of 2015 for a modification. The said petition was dismissed by the learned Judge by an order dated 13.3.2015. It is against the said order that the appellants are before us.

5. At the outset, the writ appeal cannot be entertained for the simple reason that the order dated 26.11.2014 passed by the learned Judge disposing of both the writ petitions finally, has not been questioned either on appeal or by way of review. We do not know how a petition for modification was filed. The dismissal of such a petition for modification cannot give rise to a right to file an appeal. We do not know how the second appellant has come up with this writ appeal. In so far as the

second appellant is concerned, the learned Judge has granted a stay of penalty. Therefore, the second appellant is not an aggrieved person at all.

6. Accordingly, the writ appeal is dismissed. Consequently, the above CMPs are also dismissed. No costs.

7. The appellants are granted eight weeks from today to deposit the amount as ordered by the learned Judge by his final order. Thereafter, the appeal may be disposed of within a period of three months.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

RS

To

1.The Additional Commissioner of
Customs (Appraising), office of the
Commissioner of Customs (Air Port
& Air Cargo Complex), Chennai-27.

2.The Commissioner of Customs
(Appeals), Custom House,
Chennai-1.

+1 cc to Mr.A.P. Srinivas, Advocate Sr.25252
+2 ccs to Mr.B. Satishsundar, Advocate Sr.25298

WA.No.507 of 2016 and
CMP.Nos.6942 & 6943 of
2016

RSY(CO)
EU 19.5.16