THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH

AND

THE HONOURABLE Dr.JUSTICE ANITA SUMANTH

W.A.No.1569 of 2016

and

C.M.P.Nos.19551 and 19552 of 2016

Shri.Payangadi Moidu Mohammed Ali ... Appellant

vs.

1 The Commissioner of Appeals,
Rajaji Salai Chennai-600 001.

2 The Additional Commissioner of Customs (AIR)
Office of the Commissioner of Customs
Chennai-IV Chennai-600 027.

Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 17.12.2015 passed in W.P.No.33285 of 2015 on the file of this court. 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.

WEB COPY

For appellant : Mr.S.Sivashankar
For Respondents : Mr.A.P.Srinivas, Standing Counsel

https://hcservices.ecourts.gov.in/hcservices/

JUDGMENT

(Judgment of the court was made by HULUVADI G.RAMESH, J.)

Heard the learned counsel appearing for the appellant and Mr.A.P.Srinivas, learned Standing Counsel, who is directed to take notice on behalf of the respondents.

2. This appeal is filed challenging the order of the learned Single Judge dated 17.12.2015 passed in W.P.No.33285 of 2015.

3. The case of the appellant is that when he arrived at Anna International Terminal of Chennai Airport from Jeddah by Saudi Arabian Airlines Flight on 27.6.2014, he was intercepted and gold jewellery alleged to have been concealed by him was seized and thereupon, he was issued with a show cause notice dated 12.12.2014 and the order in original was passed on 24.1.2015 by the Joint Commissioner of Customs, confiscating the seized materials and imposing a penalty of Rs.5,00,000/- under section 112(a) of the Customs Act, 1962.

4. It appears that when the matter was taken up by the Commissioner (Appeals-I), the appellant is said to have made applications on 13.2.2015, 24.2.2015 and 16.3.2015, seeking to allow him to cross-examine the witnesses, which came to be rejected. Subsequently, an order came to be passed by the Commissioner (Appeals-I), on 17.3.2015. Aggrieved against the same, the appellant has filed an appeal before the CESTAT and initiated a parallel proceedings by way of a writ petition. Considering the pendency of the appeal before the Tribunal, the learned Single Judge appears to have disposed of the writ petition directing the CESTAT to dispose of the appeal after affording an opportunity to the appellant herein. But, the Tribunal appears to have dismissed the appeal filed by the appellant herein on the ground of jurisdiction.

5. The stand now taken by the appellant is that the Commissioner is not empowered to reject the request of the petitioner in violation of Rule 5 of the Customs Act, 1962 and also it is sought to contend that against the order of appeal, the appellant, in fact, had to go before the Revisional authority but, by misconception, he went on appeal before the CESTAT and in parallel to that he has filed the writ petition.

6. It is not in dispute that as against the order of Commissioner (Appeals-I), only a revision lies before the Joint Secretary viz., the revisional authority, but, by misconception, the appellant had approached the CESTAT and now, the CESTAT also had dismissed the appeal on the ground of jurisdiction.

7. The learned Single Judge has erred in directing the appellant herein to approach the CESTAT when the jurisdiction lies only with the Joint Secretary, who is the revisional

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

authority. However, since there is non-compliance of principles of natural justice and even no roving enquiry was held in the matter, it would be better if the appellant approaches the Joint Secretary by filing a revision, if he is so advised. In such event, the revisional authority shall consider the matter afresh, after affording opportunity to the appellant and disposed of the case, on merits and in accordance with law, within a period three months from the date of receipt of a copy of this judgment. It is open to the appellant to raise all his contentions before the revisional authority. The revisional authority shall also consider the request of the appellant to cross-examine the witnesses. Accordingly, the direction of the learned Single Judge is modified and this writ appeal is disposed of. No costs. The connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssk.

To:

1 The Commissioner of Appeals,
Rajaji Salai Chennai-600 001.

2 The Additional Commissioner of
Customs (AIR)
Office of the Commissioner of Customs
Chennai-IV Chennai-600 027.

+1cc to Mr.A.P. Srinivas, Advocate, S.R.No.73754
+1cc to Mr.S. Sivashankar, Advocate, S.R.No.73384

mv(CO)
md(20/01/2017)

WEB COPY

W.A.No.1569 of 2016

https://hcservices.ecourts.gov.in/hcservices/