IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2020

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.Nos.32016, 32161 and 32162 of 2013
and
M.P.Nos.1, 1 & 1 of 2013

Syed Ahmed Fathima,
O.No.54 A N.No.156 Deevu Street,
Kayalpatnam, Thoothukudi D.T.,
Tamilnadu. ... Petitioner in W.P.No.32016 of 2013

Peer Mohammed ... Petitioner in W.P.No.32161 of 2013

Khader Ali ShaikMoulali ... Petitioner in W.P.No.32162 of 2013

Vs.

1. The Deputy Commissioner of Customs (UB/Air)
   New Customs House Air Cargo Complex,
   Chennai - 600 027.

2. The Commissioner of Customs (Appeals)
   Customs House Chennai - 600 001.

3. General Manager,
   Airport Authority of India,
   Air Cargo Complex,
   Meenambakkam Chennai - 600 027. ... Respondents in all WPs.

Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records and quashing the order of the second respondent made in the Appeal Nos.1500, 1501 and 1502/2013 dated 23.10.2013 which was passed in the order of the first respondent in Original Order Nos.654, 653 and 655 of 2013 respectively dated 23.08.2013 and direct to release of the consignment of Holy Water belonging to the petitioners covered by declaration Nos.125181, 125180 and 125182 respectively dated 23.02.2013 without any demurrage payable by the petitioners.

For Petitioner(s)	:	Mr.S.Zakir Hussain in all WPs.
For R-1 & 2	:	Mr.A.P.Srinivas in W.P.No.32016 of 2013 Mrs.Hema Muralikrishnan in W.P.No.32161 of 2013 Mr.S.R.Sundar in W.P.No.32162 of 2013
For R3	:	Mr.S.Venkatesan in all WPs.

COMMON ORDER

According to the petitioners, they imported the goods weighing 1070 kgs each from Saudi Arabia mentioning it as "Personal Effects and House Hold Goods" and requested clearance of the same through their power of attorney namely, Shri Sendur Pandian of M/s.Skylift Cargo Pvt. Limited, who inturn, filed Baggage Declaration Forms declaring the contents as "Used Personal Effects (Holy water)" and mentioning its value as Rs.6,000/- each. Alleging that the goods were non-bonafide on account of size/volume, the first respondent, vide Order-in-Original Nos.654, 653 and 655/2013 dated 23.08.2013, directed to confiscate the 1000 litres of zum zum water of declared value of Rs.6,000/- each, under Section 111(d) of the Customs Act, 1962. However, the petitioners were given an option to redeem the goods on payment of fine and penalty. But, the claim of the petitioners seeking waiver of demurrage by the Airports Authority of India, was rejected. Challenging the same, the petitioners preferred appeals before the second respondent. Vide Order-in-Appeal C.Cus Nos.1500, 1501 and 1502/2013 dated 23.10.2013, the Appellate Authority disposed of those appeals, thereby confirming the findings of the first respondent as regards the confiscation and reducing the redemption fine to Rs.500/- and personal penalty to Rs.500/- on each of the petitioners. Aggrieved over the same, the petitioners have come up with these writ petitions.

2.Upon notice, the respondents 1 and 2 filed a detailed separate counter affidavit, denying the averments made in the affidavits filed in support of these writ petitions. They inter alia stated that the petitioners without availing the alternative remedy available under the Act, by filing appeal before the CESTAT, have approached this Court with these writ petitions and hence, the same are liable to be dismissed.

3.Today, when the writ petitions were taken up for consideration, the learned counsel for the petitioners submitted that it would suffice, if the petitioners are granted liberty to file appeals before the Tribunal to agitate the issue raised herein.

4.The learned counsel appearing for the respective respondents have no serious objection in granting such relief to the petitioners.

5.Having regard to the submission so made by the learned counsel for the petitioners, which has not been seriously opposed on the side of the respondents, the petitioners are granted liberty to file appeals before the CESTAT, within a period of two weeks from the date of receipt of a copy of this order. On filing of such appeals, the Tribunal shall entertain the same, without raising any issue relating to limitation and proceed further, on merits and in accordance with law, after affording due opportunity of personal hearing to the petitioners. Accordingly, these writ petitions stand disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (MD)

//True Copy//

Sub Assistant Registrar

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To
1. The Deputy Commissioner of Customs (UB/Air)
   New Customs House Air Cargo Complex,
   Chennai - 600 027.
2. The Commissioner of Customs (Appeals)
   Customs House Chennai - 600 001.
3. The General Manager,
   Airport Authority of India,
   Air Cargo Complex,
   Meenambakkam,
   Chennai – 27.

+1cc to Mr.A.P. Srinivas, Advocate, S.R.No.22857.
+1cc to Mrs.Hema Murali Krishnan, Advocate, S.R.No.22191.
+1cc to Mr.S.R.Sundar, Standing Counsel, S.R.No.22621.
+1cc to Mr.S.Venkatesan, Advocate, S.R.No.22996.
+1cc to Mr.S.Venkatesan, Advocate, S.R.No.22997.

W.P.Nos.32016, 32161 and 32162 of 2013
and
M.P.Nos.1, 1 & 1 of 2013

PM(CO)
VSI-2(29.05.2020)