

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2020

CORAM :

The HON'BLE MR.JUSTICE M.DURAI SWAMY

Review Application No.46 of 2016
in W.P.No.2968 of 201 and
W.P.No.16483 of 2016 and
W.M.P. No.14268 of 2016

1. The Principal Commissioner of Customs,
Chennai – 1, Commissionerate (Airport),
New Customs House,
Meenambakkam,
Chennai – 600 027.
2. The Additional Commissioner of Customs (Airport),
Office of the Commissioner of Customs,
New Customs House,
Meenambakkam,
Chennai – 600 027.

... Review Applicants in
Review Appln. No.46/2016 and
Respondents in W.P.No.16483/2016

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v.

Mr. Palaniappan

... Respondent in Review
Appln. and
Petitioner in W.P.No.16483/2016

Review Application filed under Order XLVII Rule 1 of the Civil Procedure Code against the order dated 29.02.2016 passed in W.P. No.2968 of 2016 on the file of this Court.

Writ Petition filed under Article 226 of the Constitution of India for issuing a Writ of Certiorari, calling for the records relating to the Impugned Order in F.No. O.S.No.1183/2015-AIR, dated 27.02.2016 and quash the same.

For Applicants in : Mr.A.P. Srinivas
Review Application & Standing Counsel
Respondents in W.P.

For Respondent in
Review Application & : Mr. A.K. Jayaraj
Petitioner in W.P

COMMON ORDER

The respondents in W.P.No.2968 of 2016 have filed the above Review Application to review the order dated 29.02.2016, made in W.P.No.2968 of 2016.

2. By order dated 29.02.2016, this Court, after considering the case of both the parties, following the Judgment made in W.A.No.582 of

2011, dated 01.04.2011, directed the petitioner to deposit 50% of the duty for the value of the gold jewellery and on such deposit being made, the gold jewellery in question shall be released forthwith by the 2nd respondent. Further, this Court also made it clear that the order passed in the Writ Petition will not come in the way of the respondents therein to entertain the show cause notice and decide the matter. Further, this Court also directed the Writ Petitioner to co-operate in the adjudication proceedings.

3. The respondents in the Writ Petition in W.P.No.2968 of 2016 have filed the above Review Application stating that the 2nd respondent-Review Applicant, viz., The Additional Commissioner of Customs (Airport), had passed an order on 27.02.2016, i.e., two days prior to the passing of the order in the Writ Petition, ordering absolute confiscation of the gold weighing 446 gms and also imposed a penalty of Rs.1,20,000/- [Rupees one lakh twenty thousand only] under section 112 (a) (b) of the Customs Act, 1962.

4. Mr. A.K.Jayaraj, learned counsel appearing for the respondent in the Review Application submitted that the alleged date of the order, i.e. 27.02.2016 was a Saturday. Further, the learned counsel submitted that while disposing of the Writ Petition on 29.02.2016, the adjudication order was not brought to the notice of this Court. That apart, the learned counsel also submitted that the 2nd respondent had dispatched the copy of the order dated 27.02.2016 only on 03.03.2016. The respondent filed the Writ Petition in W.P.No.2968 of 2016 to issue a Writ of Mandamus, directing the 2nd respondent to release and return the gold weighing 446 gms. When the 2nd Review Applicant had passed an order confiscating the gold even prior to the passing of the order on 29.02.2016, he should have brought it to the notice of this Court, however, for the reasons best known to them, it was not brought to the notice of this Court on 29.02.2016.

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5. Mr. A.P.Srinivas, learned Standing Counsel appearing for the Review Applicants submitted that the 2nd Applicant had worked on 27.02.2016 and had passed the order on the same day.

6. Since this Court had considered all the contentions raised by the Review Applicants in the Writ Petition while disposing of the same on 29.02.2016, I do not find any error apparent on the face of the record warranting interference in the Review Application. That apart, the Review Applicants cannot re-argue the Writ Petition in the guise of Review Application. The Review Applicants are not in a position to point out any error apparent on the face of the record to entertain the Review Application. Since there is no error apparent on the face of the record warranting interference in the Review Application, the Review Application is liable to be dismissed.

7. The Writ Petitioner in W.P.No.2968 of 2016 has also filed another Writ Petition in W.P.No.16483 of 2016 to issue a Writ of Certiorari to call for the records relating to the impugned order dated 27.02.2016 and to quash the same.

8. By order dated 27.02.2016, the 2nd respondent absolutely confiscated the gold weighing 446 gms and also imposed a penalty of

Rs.1,20,000/- [Rupees one lakh twenty thousand only]. Since this Court had already passed an order on 29.02.2016 in W.P.No.2968 of 2016 directing the petitioner to deposit 50% of the duty for the value of the gold jewellery weighing 446 gms and on such deposit being made, the gold jewellery in question shall be released forthwith by the 2nd respondent and that the Review Application filed in respect of the said order is also being dismissed today, the order dated 29.02.2016 made in W.P.No.2968 of 2016 shall stand.

9. The contention of the learned counsel for the Writ Petitioner is that the petitioner could not participate in the adjudication proceedings before the 2nd respondent and in view of the order passed in W.P.No.2968 of 2016 and in the above Review Application, the impugned order dated 27.02.2016 is liable to be set aside and the matter should be remitted back to the 2nd respondent for fresh consideration.

10. Since this Court had already allowed the Writ Petition in W.P. No.2968 of 2016 and also dismissed the above Review Application,

the impugned order dated 27.02.2016 is set aside and the matter is remitted back to the 2nd respondent for fresh consideration. The 2nd respondent is directed to issue notice to the petitioner and decide the matter afresh as expeditiously as possible, preferably, within a period of eight weeks from the date of receipt of a copy of this order. It is also made clear that the petitioner shall co-operate in the pending adjudication proceedings. It is needless to say that the respondents shall comply with the order dated 29.02.2016 made in W.P.No.2968 of 2016 prior to the adjudication to be made by the 2nd respondent.

With these observations, the Review Application is dismissed and the Writ Petition in W.P.No.16483 of 2016 stands allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

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Index : Yes/No

Speaking Order/Non Speaking Order

**Note : Registry is directed to upload the copy
of the order on 08.12.2020**

Rj

To

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Chennai – 1, Commissionerate (Airport),
New Customs House,
Meenambakkam,
Chennai – 600 027.
2. The Additional Commissioner of Customs (Airport),
Office of the Commissioner of Customs,
New Customs House,
Meenambakkam,
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Review Application (Writ) No.46 of 2016
and W.P.No.16483 of 2016

M. DURAISWAMY, J

Rj



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