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W.P.No.2894 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.07.2023

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THE HON'BLE **MR.JUSTICE C.SARAVANAN**

W.P.No.2894 of 2020

S.Moinuddin

... Petitioner

Vs.

The Commissioner of Customs,
(Formerly the Principal Commissioner of Customs),
O/o.The Principal Commissioner of Customs,
New Customs House,
Meenambakkam,
Chennai - 600 027.

... Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Mandamus, to direct the respondents to release/return the Bank Guarantee No.11130100000010 dated 24.04.2017.

For Petitioner : Mr.T.Chezhiyan

For Respondent : Mr.Rajnish Pathiyil
Senior Standing Counsel



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ORDER

WEB COPY The Petitioner had imported gold in his person and had not made proper declaration while disembarking from the aircraft and attempted to walk away by attempting to evade customs duty on imported gold.

2. Under these circumstances, the Joint Commissioner of Customs vide Order-in-Original No.218/27/03/2014 dated 27.03.2014 ordered confiscation of the imported gold by giving an option to pay redemption fine of Rs.12,50,000/- and a penalty of Rs.2,50,000/-.

3. The petitioner successfully challenged the same before the Appellate Commissioner, who by an common Order-in-Appeal C.Cus-I No.349,350/2015 dated 29.06.2015 partly modified the Order-in-Original No.17/20/04/2015 dated 20.04.2015 passed by the Joint Commissioner of Customs. The department's appeal was dismissed.

4. The Department, thus filed a Revision Petitions before the Revisional Authority against common Order-in-Appeal No.C.Cus-I No.349,350/2015 dated 29.06.2015 passed by the Appellate Commissioner



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under Section 129DD of the Customs Act, 1962. The Revisional Authority vide common order dated 22.01.2016 set aside the order of the Appellate Commissioner dated 29.06.2015 and thus restored Order-in-Original No.218/27/03/2014 dated 27.03.2014 of the Joint Commissioner.

5.The petitioner successfully challenged the order of the Revisional Authority before this Court in W.P.No.16682 of 2016. The said writ petition was allowed by way of remand by this Court by its order dated 24.01.2017.

Relevant portion of the order reads as under:-

“10.Accordingly, the impugned order is set aside, with liberty to the GOI to pass a fresh order within a period of eight (8) weeks from the date of receipt of a copy of this order, after corrective measures are taken.

10.1.In case, the requisite corrective steps are not taken, respondents No.4, will ensure compliance of the order dated 29.06.2015, passed by the Commissioner of Appeals.

11.The captioned writ petition is disposed of in terms of the aforesaid direction. Consequently, pending application shall stand closed. There shall, however, be no order as to costs.”

6.Meanwhile, the petitioner had furnished the Bank Guarantee on 24.04.2017 for a sum of Rs.1,00,000/- before order dated 22.01.2016 of the Revisional Authority was set aside by this Court vide its order dated 24.07.2017. It appears that the goods have also been released.



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7.The Revisional Authority was required to pass a fresh order within a period of eight weeks of the order dated 24.01.2017. The Revisional Authority has not passed any order thereafter.

8.Therefore, question of keeping the bank guarantee alive for an amount over and above the amount that was ordered to be paid by the Appellate Commissioner vide order dated 29.06.2015 in Order-in-Appeal No.C.Cus-1 No.349,350/2015 cannot be countenanced.

9.If the petitioner has already complied with the order of the Appellate Commissioner dated 29.06.2015 in Order-in-Appeal No.C.Cus-1 No.349,350/2015, before the release of the gold items, the Bank Guarantee furnished by the petitioner cannot be kept alive.

10.Therefore, the said Bank Guarantee has to be cancelled particularly in the light of the facts that the Revisional Authority has also not passed any *denovo* order pursuant to the aforesaid order dated 24.01.2017 of this Court.



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WEB COPY 11. Therefore, this writ petition deserved to be allowed. It is accordingly allowed.

17.07.2023
(1/2)

Index : Yes/No
Internet : Yes/No
Speaking/Non-speaking Order
Neutral Citation: Yes/No
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To

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(Formerly the Principal Commissioner of Customs),
O/o. The Principal Commissioner of Customs,
New Customs House,
Meenambakkam,
Chennai - 600 027.



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C.SARAVANAN, J.

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