
(2016) 09 MAD CK 0089
In the Madras High Court
Case No : Writ Petition No. 29606 of 2016

Balakrishna Reddy

APPELLANT

Vs

Assistant Commr. of Cus., Chennai

RESPONDENT

Date of Decision : 01-09-2016

Acts Referred:

Citation : (2016) 340 ELT 315

Hon'ble Judges : T.S. Sivagnanam, J.

Bench : Single Bench

Advocate : Shri A. Ganesh, Counsel, for the Petitioner; Shri G.M. Syed Nurullah Sheriff, SPC, for the Respondent

Final Decision : Disposed Off

Judgement

T.S. Sivagnanam, J. - Heard Mr. A. Ganesh, learned counsel appearing for the petitioner and Mr. G.M. Syed Nurullah Sheriff, learned Senior Panel Counsel, appearing for the respondents. By consent of the learned counsel for both sides, the writ petition is taken up for final disposal.

2. The petitioner seeks for the issuance of a writ of mandamus, to implement the order passed by the Appellate Authority in the Order-in-Appeal in C. Cus-I No. 669 of 2015 in C4-1/580/0/2015-Air, dated 29-10-2015. The Appellate Authority, while allowing the appeal filed by the petitioner as against the Order-in-Original in O.S. No. 230/2015-Air, dated 1-6-2015, heard the appeal filed by the Department as well and dismissed the appeal filed by the Department and allowed the petitioner's appeal and reduced the redemption fine for re-export from Rs. 2,10,000/- to Rs. 1,50,000/- and did not interfere with the personal penalty. Though the order was passed on 29-10-2015, the respondent did not implement the order and therefore, the petitioner is before this Court by way of this writ petition.

3. Earlier, when this matter was called on 26-8-2016, the matter was adjourned to enable the learned Senior Panel Counsel to get the instructions from the

Department.

4. Today, on instructions, the learned Senior Panel Counsel submitted that, a revision has been filed as against the said order before the Joint Commissioner and since the revision is pending, the Department is unable to implement the order passed by the Commissioner (Appeals).

5. Admittedly, there is no interim order granted by the Revisional Authority, as against the order passed by the Commissioner (Appeals). Therefore, the mere pendency of the revision will not amount to stay of the order passed in the appeal. It is worthwhile to mention, at this juncture, that the Hon"ble Division Bench of the Punjab and Haryana High Court, in the case of NVR Forgings v. Union of India, reported in 2016 (335) E.L.T. 679 (P&H), considered the question as to whether the Joint Secretary (Revisional Authority) is competent to entertain a revision, against the order passed by the Appellate Authority, who is in the rank of the Commissioner of Customs and held that the impugned order therein passed by the Joint Secretary to the Government, who was also the Commissioner of Central Excise and Customs, and the order in the appeal as well as the Revisionary order has been passed by the Officers of the same rank, it would not be permissible in law to do so.

6. This decision, if applied to the facts of the present case, then, it has to be held that the Revisional Authority has no jurisdiction to entertain the revision petition, against an order passed by the Officer, who is in the same cadre. In any event, the order passed by the Appellate Authority, having been nearly one year back, this Court is of the view that one more opportunity can be granted to the Department to pursue the revisional remedy and if they are unable to obtain any orders, either interim or final, then, they have to comply with the Order-in-Appeal.

7. Accordingly, this writ petition is disposed of, granting four weeks" time to the respondent/Department from the date of receipt of the copy of this order, to obtain appropriate interim or final orders from the Revisional Authority, failing which, the orders passed by the Commissioner of Appeals, dated 29-10-2015, shall be implemented within a period of ten days from the date on which the thirty days" period expires. No costs.