

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

FRIDAY, THE 6TH DAY OF FEBRUARY 2015/17TH MAGHA, 1936

WP(C).No. 3176 of 2015 (V)

PETITIONER(S) :

**SUBAIR KALLUNGAL, AGED 44 YEARS,
S/O.V.P.ABDULLA HAJI, 2C, BRIDGE TOWN APARTMENTS,
VANDIPETTA, NADAKKAVU, CALICUT-673 011.**

**BY ADVS.SRI.ASHIK K.MOHAMMED ALI
SMT.SAJNA T.UMMER
SMT.V.RAIMA RAMESH**

RESPONDENT(S) :

- 1. UNION OF INDIA,
REPRESENTED BY THE SECRETARY, MINISTRY OF FINANCE,
DEPARTMENT OF REVENUE, NORTH BLOCK, NEW DELHI-110 001.**
- 2. CENTRAL BOARD OF EXCISE AND CUSTOMS,
REPRESENTED BY THE CHAIRMAN, NORTH BLOCK,
NEW DELHI-110 001.**
- 3. THE CHIEF COMMISSIONER OF CENTRAL EXCISE,
CUSTOMS AND SERVICE TAX (KERALA ZONE), C.E.BUILDING,
I.S.PRESS ROAD, COCHIN- 682 018.**
- 4. THE COMMISSIONER OF CUSTOMS,
CUSTOMS HOUSE, WELLINGTON ISLAND, COCHIN- 682 009.**
- 5. THE ADDL. COMMISSIONER OF CUSTOMS (PREVENTIVE),
OFFICE OF THE COMMISSIONER OF CUSTOMS (PREVENTIVE),
CATHOLIC CENTRE, BROAD WAY, COCHIN-682 031.**
- 6. THE JOINT COMMISSIONER OF CUSTOMS,
CUSTOMS HOUSE, W/ISLAND, COCHIN- 682 009.**
- 7. STATE OF KERALA,
REPRESENTED BY THE GOVERNMENT PLEADER,
HIGH COURT OF KERALA, ERNAKULAM**

**R1 TO R6 BY ADV. SRI.JOHN VARGHESE, S.C
R7 BY GOVERNMENT PLEADER SRI.K.C.VINCENT**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 06-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT P1: TRUE COPY OF THE SHOW CAUSE-CUM-DEMAND NOTICE
NO.S-14/FA/2013-R.I.CUS.DATED 13.03.2014.**
- EXT P2: TRUE COPY OF THE WRITTEN REPRESENTATION DATED 16.04.2014.**
- EXT P3: TRUE COPY OF THE BOARD'S INSTRUCTION M.F.(D.R)
F.NO437/143/2009-CUS.IV(PT.) DATED 15.04.2011.**
- EXT P4: TRUE COPY OF THE BOARD'S CIRCULAR NO.24/2011 CUS.
DATED 31.05.2011.**
- EXT P5: TRUE COPY OF THE CORRIGENDUM DATED 02.04.2014 ISSUED BY
THE 5TH RESPONDENT.**
- EXT P6: TRUE COPY OF THE CORRIGENDUM DATED 22.04.2014
DATED 22.04.2014 ISSUED BY THE 5TH RESPONDENT.**
- EXT P7: TRUE COPY OF THE REPLY OF CORRIGENDUM BY WAY OF SPEED
POST ON 09.05.2014.**
- EXT P8: TRUE COPY OF THE JUDGMENT DATED 13.08.2014 OF
THIS HONOURABLE COURT IN WP(C) NO.14054 OF 2014.**
- EXT P9: TRUE COPY OF THE OFFICE ORDER NO.C.NO.II/39/14/2012 CC(KZ) I
DATED 25.06.2012 OF THE CHIEF COMMISSIONER OF CENTRAL
EXCISE, CUSTOMS AND SERVICE TAX, C.R.BUILDING,
I.S.PRESS ROAD, COCHIN-682 018.**
- EXT P10: TRUE COPY OF THE NOTIFICATION NO.15/2002 CUS. (N.T)
DATED 07.03.2002.**
- EXT P11: TRUE COPY OF THE WRITTEN OBJECTION SUBMITTED BEFORE
THE 4TH RESPONDENT.**
- EXT P12: TRUE COPY OF THE ARGUMENT NOTES SUBMITTED BEFORE
THE 4TH RESPONDENT WITHOUT ITS ANNEXURES.**
- EXT P13: TRUE COPY OF THE NOTIFICATION NO.40/2012 CUS. (N.T.)
DATED 02.05.2012.**
- EXT P14: TRUE COPY OF THE NOTIFICATION NO. 44/2011 -CUS. (N.T)
DATED 06.07.2011.**
- EXT P15: TRUE COPY OF THE ORDER (ORIGINAL) NO.COC-CUSTOM 000
COM -033-14-15 DATED 20.11.2014 ISSUED BY THE 4TH RESPONDENT.**

WP(C).No. 3176 of 2015 (V)

**EXT P16: TRUE COPY OF THE M.F.(D. R& I) NOTIFICATION NO.145-CUS .
DATED 01.11.1969.**

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

P.R. RAMACHANDRA MENON, J.

=====

W.P.(C). No. 3176 of 2015

Dated this the 6th day of February, 2015

JUDGMENT

The petitioner has approached this Court with the following prayers:

- "1. Call for the records leading to the case;
2. Issue a writ of certiorari or any other appropriate writ or direction, thereby quashing Ext.P1, P5 and P6 issued to the petitioner.
3. Issue a writ of certiorari or any other appropriate writ or direction, thereby quashing Ext.P15, order issued by the 4th respondent."

2. The sequence of events narrated in the writ petition shows that, two ladies by name Arifa Haris and Asifa Veera Ppoyil wearing 'burkha' arrived in the Cochin International Airport by Emirate Flight No. EK 532 on 19.09.2013. On the basis of secret intimation obtained by the concerned authorities, their baggages were intercepted and personal search was also made. In the course of search and further procedure, it was revealed that, they had smuggled nearly 36 kgs of gold in the form of bars concealed in a belt wrapped around their body. A criminal case was registered and after conducting detailed investigation, role of

petitioner herein was revealed. The petitioner has been shown as the 10th alleged offender in Ext.P1 show cause notice issued to the parties concerned.

3. Pursuant to Ext.P1 dated 13.3.2014, the petitioner filed Ext.P2 representation dated 16.4.2014. The petitioner points out, as per Ext.P2, that the 5th respondent who issued Ext.P1 does not have any jurisdiction. While so, Exts. P5 and P6 corrigendum notices were issued. The petitioner submitted Ext.P7 reply as well and thereafter approached this Court by filing W.P.(C). No. 14054 of 2014 mainly contending that the concerned respondent did not have power, jurisdiction or competence to have issued the show-cause notices. There was also a plea that the proceedings were barred by limitation. After hearing both the sides, the said writ petition was disposed of as per Ext.P8 judgment on 13.08.2014, directing the 4th respondent to consider the question of jurisdiction as a preliminary issue and to pass appropriate orders. It was pursuant to said verdict, that the matter was considered, leading to Ext.P15 order dated 20.11.2014 which has been passed by the 4th respondent. This

made the petitioner to approach this Court again by filing this writ petition challenging the pleadings and proceedings as well as the course and events.

4. The learned Standing Counsel for the respondent 2 to 6 submits that the writ petition is pre-mature, in so far as the merit is still to be considered. It is also asserted that, notice has been issued by the competent authority, who is having the power and jurisdiction in this regard. It is further pointed out that, if at all the petitioner is aggrieved in any manner, it is still open for the petitioner to challenge the same by way of appeal under Section 129 A of the Customs Act, as made clear in the opening paragraph of Ext.P15. The learned counsel for the petitioner points out that, there is no statutory remedy against the impugned order; which however is sought to be rebutted by the learned Standing Counsel to the effect that, if the petitioner files an appeal before the concerned authority in terms of the appellate remedy as pointed out in Ext.P15, the same will be considered and a decision will be rendered 'on merits' with regard to all points raised.

5. In the said circumstance, this Court does not find it necessary to consider the issue invoking the discretionary jurisdiction of this Court under Article 226 of the Constitution of India. The matter has to be dealt with by the Departmental authorities at the first instance. Accordingly, interference is declined and the writ petition is dismissed, without prejudice to pursue the proceedings as above.

**P.R. RAMACHANDRA MENON,
JUDGE.**

kp/-