IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.06.2015

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THE HONOURABLE MR. JUSTICE T.RAJA

W.P.No.10541 of 2014

Kumar Sinniah ...Petitioner

Versus

1. The Deputy Commissioner of Customs,
AIR, Office of the Commissioner of Customs,
New Custom House, Meenambakkam,
Chennai-600 027.

2. The Foreigners Regional Registration Officer,
Chennai, Bureau of Immigration,
Shasthri Bhavan, Haddows Road,
Nungambakkam, Chennai-34. ...Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the 1st respondent herein to issue ''No Objection Clearance Certificate'' for Exit Visa to the 2nd respondent and not to insist upon the penalty amount which is under challenge before the customs, excise and service Tax Appellate Tribunal, Chennai Bench.

For Petitioner : Mr.V.R.Karthikeyan

For 1st Respondent : Mr.K.Mohanamurali, Central Government Standing Counsel

For 2nd respondent : Mr.B.Ramarathnam, Central Government Standing Counsel

O R D E R

This Writ Petition has been filed seeking issuance of a Writ of Mandamus, directing the 1st respondent herein to issue ''No Objection Clearance Certificate'' for EXIT VISA to the 2nd respondent and not to insist upon the penalty amount which is under challenge before the Customs, Excise and Service Tax Appellate Tribunal, Chennai Bench.

2. The learned Counsel for the petitioner would submit that the petitioner being a Malaysian Citizen, holding a Malaysian Passport bearing No.A27913899 is having residential address No.01-07,

Seroja ATN Jalan Puchong India, H Salonger, Malaysia. On 29.11.2013 at 7.30, he came from Kulalampur to Chennai by Air Asia Airlines Flight carrying 7 kilograms of gold bar keeping in his trouser pocket and tied in his waste. Before passing the green channel, he voluntarily declared the same to the customs officials at the Airport Customs Office. However, he was arrested for the reasons that he did not possess any documents of licence for the offences under Sections 132, 135(1)(a) and (b) of the Customs Act. Resultendly, he was remanded to judicial custody. Thereafter, he obtained statutory bail due to the non-filing of the charge sheet by the 1st respondent within 60 days from the date of his arrest. In spite of the grant of bail, he could not come out from the prison due to the imposition of detention order under COFEPOSA Act. However, the detention order was also set aside by this Court in HCP No.403 of 2014 on 02.09.2014 on the ground that the detention was neither communicated to the Consulate General of Malaysia at Chennai nor to his family at Malaysia. After the detention order came to be set aside, on execution of sureties before the Judicial Magistrate, Alandur, he was released on bail in the month of September, 2014.

3. The learned Counsel for the petitioner would further submit that in the meanwhile, he has also suffered an order of confiscation under Section 111(d) and Section (i) of the Customs Act, 1962. Subsequently, the petitioner suffered an order in O.P.No.696/8 dated 08.10.2014 for absolute confiscation of 7 gold bars of 24 carat purity of 1 kg each totally weighing 7 kilograms and totally valued at Rs.2,12,73,000/- under Section 111(d) and (i) of Customs Act read with Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992. As against the same, the petitioner also filed an appeal before the Commissioner of Customs, Chennai. Even after suffering the dismissal of his appeal, the petitioner has filed a revision under Section 129(DD) of the Customs Act,1962. In this backdrop, the grievance of the petitioner is that when the petitioner has filed a revision under Section 129(DD) of the Customs Act, he is entitled to get an automatic stay although that has not been explicitely given in the aforesaid section.

4. The learned Counsel for the petitioner would also submit that as a matter of fact, the petitioner, who has suffered an order in appeal, has filed an appeal to meet the penalty amount and as he is the Malaysian citizen, he should be allowed to go back to his place where he has got valuable properties for disposal, so that he would be able to come back and meet the liability as ordered by the Appellate Authority, even in the event of failure to succeed before the revisional authority.

5. Further, the learned Counsel for the petitioner would contend that in view of non-filing of the counter by both respondents 1 and 2, the petitioner was not able to see the light of final hearing even the Visa also expired on 02.06.2015 and only by the orders of this Court, he is staying in Chennai. As it is causing so much financial burden, the learned Counsel for the petitioner sought

for a direction as sought for to the 1st respondent herein to issue ''No Objection Clearance Certificate'' for Exit Visa to the 2nd respondent and not to insist upon the penalty amount which is under challenge before the Customs, Excise and Service Tax Appellate Tribunal, Chennai Bench.

6. A detailed counter has been filed by the 1st respondent objecting heavily the direction sought for by the petitioner.

7. Mr.K.Mohanamurali, learned Central Government Standing Counsel appearing for the 1st respondent submitted repeatedly before this Court that the petitioner, who had smuggled the goods in question, namely, 7 gold bars of 24 carat purity of 1 kg each totally weighing 7 kilograms and totally valued at Rs.2,12,73,000/- under Sections 111(d) and (i) of Customs Act read with Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992, they were confiscated. Subsequently, the petitioner has to pay penalty of Rs.20,00,000/-. The petitioner admittedly filed an appeal against the said order and also filed a revision under Section 127(DD) of the Customs Act, 1962. The learned Central Government Standing Counsel would further submit that When the revision filed by the petitioner is pending consideration, unless he clears the liability imposed against him by way of paying the penalty amount, he should not be allowed to go back and no direction as sought for by the petitioner could be issued by the 1st respondent. Without clearing the penalty, if any direction is granted as sought for, it will be very difficult to recover the penalty amount from the petitioner as he is a Malaysian citizen and it will be very difficult to trace him also. On these grounds, the learned Central Government Standing Counsel appearing for the 1st respondent seeks dismissal of the Writ Petition.

8. Mr.B.Ramaratnam, learned Central Government Standing Counsel appearing for the 2nd respondent filing a draft counter would submit that till date no NOC was issued by the 1st respondent, therefore, the Foreigners Regional Registration Officer (FRRO) has no objection in granting exit clearance to the petitioner, provided, the 1st respondent issues NOC.

9. Heard both sides. I have also perused the records carefully.

10. As rightly pointed out by the learned Central Government Standing Counsel appearing for the 2nd respondent, the petitioner has suffered an order of confiscation along with penalty under Section 111(d) and (i) of Customs Act read with Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992. Therefore, along with the confiscation of the gold, he has to pay a penalty of Rs.20 Lakhs under Section 112 of the Customs Act, 1962. Against the said order, a revision is pending. Unless the said revision is disposed of on merits, this Court will not be in a position to issue any direction as sought for by the petitioner.

11. Therefore, considering the fact that the petitioner is a Malaysian citizen, whose Visa having stood expired on 02.06.2015, taking it as a special and peculiar case, I hereby direct the revisional authority to take up the revision petition and dispose of the same on merits and in accordance with law, as expetitiously as possible, preferably, within a period of 8 weeks from the date of receipt of a copy of this Order. The petitioner is also permitted to produce a copy of this Order before the revisional authority.

12. At this stage, the learned Central Government Standing Counsel appearing for the 1st respondent requested this Court to recall the order passed by this Court dated 01.06.2014 imposing cost of Rs.5,000/- on his officer for non-filing the counter immediately, since he has filed the counter without taking further time.

13. Considering his request that the counter has been filed by the 2nd respondent, the order directing the payment of cost is recalled.

14. With the above direction, the Writ Petition is disposed of. No costs.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

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To

1. The Deputy Commissioner of Customs,
AIR, Office of the Commissioner of Customs,
New Custom House, Meenambakkam,
Chennai-600 027.

2. The Foreigners Regional Registration Officer,
Chennai, Bureau of Immigration,
Shasthri Bhavan, Haddows Road,
Nungambakkam, Chennai-34.

1 CC to Mr.V.R.Karthikeyan, Advocate SR.No. 27433

1 CC to Mr.K.Mohanamurali,, Advocate SR.No. 27050

1 CC to Mr.B.Ramarathnam,, Advocate SR.No. 28191

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BR (CO)
PSI (02.07.2015)