IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

WP.No.20715 of 2015
MP.No.1 of 2015

M/s.J.K.S.Air Travels, represented by its Proprietor
S.Jalaludeen, Chennai-5. Petitioner

Vs

1.The Chief Commissioner of Customs
Customs House, No.60, Rajaji Salai, Chennai-1

2,The Commissioner of Customs (Airport),
New Custom House, Meenambakkam, Chennai-27.

3.The Joint Commissioner of Customs
(Adjudication Air) Office of the
Principal Commissioner of Customs Commissionerate
Chennai-1 (Airport) New Custom House,
Meenambakkam, Chennai-27

4.The Superintendent of Customs,
Ware House Customs House,
No.60, Rajaji Salai, Chennai-1.

....Respondents

Prayer:- This Writ Petition is filed under Article 226 of the Constitution of India, for the relief as stated therein.

For Petitioner : Mr.A.K.Jayaraj

For Respondents : Mr.T.Chandrasekaran,
Sr.Standing Counsel

ORDER

This Writ Petition is filed to issue a Writ of Mandamus, directing the Respondents to return a sum of Rs.7,00,000/- seized on 24.06.2014 from the office premises of the Petitioner at 59A, Akbar Sahib Street, Triplicane, Chennai 600005, by giving effect to the order passed by the 3rd Respondent in Order-in-Original No.58, dated 30.04.2015.

2. The case of the Petitioner is as follows:-

a. The Petitioner is a Proprietorship Concern, registered with Small Scale Industries, bearing No.3300221100524 and carrying on the business of air ticketing, organizing tours and travels. The Petitioner borrowed a sum of Rs.10,00,000/- for interest as hand loan from the friends by giving money Bond and post dated cheques. Out of the said sum, Rs.3,00,000/- was spent towards rental advance and infrastructural works. On 24.6.2014, when the Manager was present in the Office, four investigating officers entered into the said office at 12.30 hours without any search warrant and conducted search and seized the remaining amount of Rs.7,00,000/- from the table drawer and the documents and the gift items. On the same day, the Manager lodged a complaint to D1 Police Station, which was not accepted. On the next day, the very same officers came to the said Office premises and asked the Manager to come to their Office and the Manger was taken to their Office on 25.6.2014. The Officials recorded statement from the Manager

b. The Petitioner, on enquiry with the investigating agency, came to know that one of its customers, to whom the Petitioner had booked air ticket, was caught by the Officers for having possession of Indian currency more than the prescribed limit, while boarding abroad. Under the guise of suspicion, the office premises of the Petitioner was searched and there was promise that after scrutiny, the seized amount would be released. The Manager has made a representation dated 14.7.2014 and the Petitioner has also made a representation on 16.7.2014, stating briefly the source of money and requesting to return the seized amount. But, in turn, summons were issued to appear on three occasions on 21.7.2014, 25.7.2014 and 1.8.2014 and for all the summons, the Petitioner sent a reply stating the fact of ill health. Since the said sum was not returned, the Petitioner filed WP.No.22700 of 2014, which was allowed by order dated 8.10.2014, directing to return the seized amount of Rs.7,00,000/- to the Petitioner on executing a personal bond to deposit the amount if an order of adjudication is passed against the Petitioner. As against the same, WA.No.1720 of 2014 was filed by the Department and the said writ appeal was disposed by order dated 5.1.2015, directing the Department to issue fresh summons. Thereafter, fresh summon was issued to the Petitioner, to which the Petitioner appeared and filed a reply to the show cause notice dated 19.12.2014.

c. Earlier the Petitioner was directed to show the cause to the Joint/ Additional Commissioner of Customs (Preventive), Customs Commissionerate III, Chennai and when the Petitioner requested for personal hearing, he was informed that since two different adjudication officers were nominated for a single show cause notice, the same will be referred to the Chief

Commissioner of Customs and also informed the investigating Department to nominate a common adjudicating authority to adjudicate both the cases referred to in the show cause notice by a single adjudicating authority. Thereafter, the 3rd Respondent has been appointed as a common adjudicating authority. The 3rd Respondent granted personal hearing to the Petitioner and after perusing all the submissions of the Petitioner, passed an Order-in-Original No.58,dated 30.4.2015, releasing the seized sum of Rs.7,00,000/-, as the same is not liable for confiscation under Section 121 of the Customs Act. However, the said seized amount has not been returned to the Petitioner. Hence, this Writ Petition has been filed for the relief as stated above.

3.Heard both sides.

4. The learned counsel for the Petitioner contended that the act of the Respondents in not returning the seized amount is not only contrary to the provisions of the Customs Act and Circulars issued by the Department, but also against the decisions reported in 1991-55-ELT-433 (Union of India Vs. Kamalakshi Finance Corporation Limited) and that because of not releasing the seized money, the business operations of the Petitioner are very much affected and prayed for the relief as prayed for in this Writ Petition.

5. The learned senior standing counsel for the Respondents submitted that as against the Order-in-Original No.58, dated 30.4.2015, an appeal has been filed, challenging the correctness of the direction given to release Rs.7 lakhs seized from the office of the Petitioner, as the same is not liable for confiscation under Section 121 of the Customs Act, 1962 and hence, till the disposal of the appeal, the seized amount cannot be released and prayed for dismissal of this Writ Petition.

6.I have considered the aforesaid submissions and perused the materials available on record and also the order impugned in this writ petition and the order of the appellate authority as well.

7.It is manifested from the records that when this matter was taken by this Court on 31.7.2015, the following direction was given, which reads as under:-

"Considering the submissions made by the learned counsel for both sides and taking note of the fact that the appeal filed by the Department is pending before the appellate authority, the appellate authority is hereby directed to take up the appeal as a special case under the peculiar facts and circumstances brought before this Court and dispose of the same, on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order. The petitioner is directed to cooperate for the early disposal of the appeal."

8.Thereafter, the appeal filed by the petitioner herein in Appeal File No.C4/329/0/2015-Air was dismissed by the appellate authority/Commissioner (Appeals-I) along with the appeal filed by the Department as against the Order-in-Original NO.58/2015, dated 30.4.2015 passed by the Joint Commissioner of Customs (Adjudication-Air), by order, dated 14.9.2015.

9.A perusal of the order of the appellate authority absolutely shows no reason for dismissing the appeal filed by the petitioner herein or for setting aside the Clause (v) of the order of the Joint Commissioner of Customs passed in Order-in-Original No.58 of 2015, dated 30.4.2015.

10.It is pertinent to refer the order of the appellate authority in respect of the appeal filed by the petitioner herein, which reads as under:-

"As regards, the appeal filed by the appellant whose name has been arraigned as abettor, I find that in his statements given on various dates Shri Jayabal Shivakumar, the passenger, interalia states that the two checked-in-baggages containing the Indian currencies were handed over by Jalaludeen at his travels office viz., M/s.JKS Air Travels, tickets were booked by Jalaludeen, Shri Gani @ Naina Mohamed, staff of the travels accompanied Shri Jayabal Shivakumar on the directions of the appellant. These facts were corroborated by the appellant's company staff viz., Smt. Vimala and Shri Gani @ Naina Mohamed in their statements given on summons. Thus, their statements cannot be treated as obtained through coercion. Also, I find that the appellant has not responded to 11 summons issued by the DRI directing him to appear goes to say that something is fishy about the issue. The appellant should have appeared before the DRI and proved his innocence if he had any point. On the contrary, the Department (DRI) has taken much effort to prove the involvement of Shri. Jalaludeen in the impugned seizure of Indian currency from Shri Jayabal Shivakumar. Hence, I find no infirmity in the orders of the LAA in imposing the penalty of Rs.3,00,000/- on the appellant under Section 114 of the Customs Act, 1962 and I uphold the same.

In view of the above discussions, I

(i) dismiss the appeal filed by the Department in File No.C4-I/385/)/2015-Air as infructuous; and

(ii) reject the appeal filed by the appellant viz., Shri S. Jalaludeen in File No.C4-I/329/O/2015-Air as devoid of merits."

11.As afore stated, there is absolutely no reason or finding to set aside the Clause (v) of the Order of the Joint Commissioner of Customs passed in Order-in-Original No.58 of 2015, dated 30.4.2015 or for rejecting the appeal filed by the petitioner herein.

12.Clause (v) of the order of the Joint Commissioner of Customs, dated 30.4.2015, reads as under:-

"I order to release Rs.7,00,000/- seized from the Office of M/s.JKS Air Travels as the same are not liable for confiscation under Section 121 of the Customs Act, 1962."

13.At this juncture, it is relevant to refer to the provisions of Section 121 of the Customs Act, as the Joint Commissioner of Customs, who had passed the Order-in-Original, had ordered to release a sum of Rs.7,00,000/-, which had been seized from the office of M/s.JKS Air Travels on the ground that it was not liable for confiscation under Section 121 of the Customs Act, 1962.

14.Section 121 of the Customs Act reads as under:-

"121.Confiscation of sale-proceeds of smuggled goods:-Where any smuggled goods are sold by a person having knowledge or reason to believe that the goods are smuggled goods, thereof shall be liable to confiscation."

15.For invoking the provisions of Section 121, the following two pre-conditions have to be satisfied:-

a.The sale proceeds should relate to smuggled goods.
b. The sale should have been made by a person having knowledge or reason to believe that the goods are smuggled goods.

16.In the case on hand, there is absolutely no evidence to show that the said sum was relating to the sale proceeds of smuggled goods, which were sold by the petitioner, who was having knowledge or reason to believe that the goods are smuggled goods.

17.Since such kind of evidence was not produced before the third respondent, he had ordered to release Rs.7,00,000/- seized from the Office of M/s.JKS Air Travels as the same are not liable for confiscation under Section 121 of the Customs Act, 1962."

18.Even before the appellate authority, no evidence was produced to prove that the said sum was relating to the sale proceeds of the smuggled goods, which were sold by the petitioner herein, who was having the knowledge or reason to believe that the goods are smuggled goods.

19.Before this Court also, such kind of evidence has not been produced. In the absence of such kind of evidence, the third respondent has rightly passed the order to release the said sum to the petitioner. On the contrary, there is absolutely nothing in the order of the appellate authority, either for upholding the confiscation of the said amount from the office of the petitioner or for setting aside the order of the third respondent or for rejecting the appeal filed by the petitioner herein.

20.Under these circumstances, this Court is of firm view that merely on the contradictory statements of somebody, the confiscation of anything from anybody is against law.

21.In the case on hand, merely relying on the contradictory statements of the accused passengers without any prima facie cogent evidence, the confiscation of the said amount from the office of the petitioner cannot be held to be valid and the writ petition is deserved to be allowed.

Accordingly, the writ petition is allowed setting aside the order of the appellate authority in so far as dismissing the appeal filed by the petitioner herein. The respondents are directed to return the amount of Rs.7,00,000/- of Indian Currency seized from the office of the petitioner on 24.6.2014, within a period of two weeks from the date of receipt of a copy of this order, but subject to their executing a personal bond to deposit the amount, if an order of adjudication is passed against the petitioner. However, there will be no order as to costs. Connected M.P. is closed.

Srcm

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To:

1.The Chief Commissioner of Customs ,Customs House,
No.60, Rajaji Salai, Chennai-1

2.The Commissioner of Customs (Airport), New Custom House, Meenambakkam, Chennai-27.

3.The Joint Commissioner of Customs (Adjudication Air), Office of the Principal Commissioner of Customs, Commissionerate Chennai-1 (Airport), New Custom House, Meenambakkam, Chennai-27.

4.The Superintendent of Customs, Ware House, Customs House, No.60, Rajaji Salai, Chennai-1

+ 1 cc to Mr.A.K.Jayaraj, Advocate SR 63479

+ 1 cc to Mr.T.Chandrasekaran, Advocate SR 63627

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WP.No.20715 of 2015
and
M.P.No.1 of 2015