IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.08.2015

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

WP.Nos.22438 and 24230 of 2015
M.P.Nos.1 to 3 of 2015

Shaik Mohammad Ali
Power of Attorney of Shaik Shamim Banu
... Petitioner in W.P.22438/2015

S.Moinuddin
... Petitioner in W.P.24230/2015

Vs.

1. The Commissioner of Customs (Airport)
O/o. The Principal Commissioner of Customs
Commissionerate New Customs House
Meenambakkam Chennai-27.

2. The Assistant Commissioner of Customs (Air Port)
Anna International Airport
Meenambakkam Chennai-27.
... Respondents in W.P.22438/2015

1. The Chief Commissioner of Customs,
O/o.The Chief Commissioner of Customs,
Custom House, Chennai - 600 001.

2. The Commissioner of Customs (Airport)
O/o. The Principal Commissioner of Customs
Commissionerate New Customs House
Meenambakkam Chennai-27.

3. The Assistant Commissioner of Customs (Air Port)
Anna International Airport
Meenambakkam Chennai-27.
... Respondents in W.P.24230/2015

Prayer:- WP.No.22438 of 2015 is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents to implement the order passed by the Commissioner

(Appeals-1) Chennai in No.C4-I/314/0/2015-Air vide order-in-Appeal C.Cus-1 No.331/2015 dated 24.06.2015.

WP.No.24230 of 2015 is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents to implement the order passed by the Commissioner (Appeals-1) Chennai vide C4.-I/ 349 & 350/O/2015-Air dated 29.6.2015 in C4-I/138 & 256/O/2015 AIR.

For Petitioners : Mr.T.Chezhiyan

For Respondents : Mr.V.Sundareswaran

COMMON ORDER

By consent of the learned counsel on either side, these Writ Petitions are taken up for final disposal.

2. The facts, leading to filing of these Writ Petitions, are as follows:-

a. The Principal of the Petitioner in WP.No.22438 of 2015, who is an eligible passenger, brought gold and the same was seized, followed by a show cause notice as to why the gold should not be confiscated and the same was duly replied and after personal hearing, the adjudicating authority passed an Order-in-original No.17/2015, dated 20.04.2015, ordering re-shipment of the gold to the country of origin on payment of redemption fine under Section 125 of the Customs Act, 1962 and penalty under Section 112(a) of the Customs Act, 1962. Being aggrieved against the said Order-in-original, an appeal was filed by the Petitioner/Power of Attorney to the Commissioner of Customs (Appeals), Chennai, who upon hearing has passed orders in terms of reduction in the quantum of fine and penalty vide C4-I/314/0/2015-Air, dated 24.06.2015. Thereafter, the Petitioner/Power of Attorney of the Principal approached the officer of Customs in Airport for the execution of the order showing his willingness to pay the fine and penalty. However, the said order was not executed. Being aggrieved by the inaction, though a letter was given to the Commissioner of Customs (Airport), Chennai dated 15.07.2015, there is no response. Hence, the Petitioner is before this Court.

b. Similarly the Petitioner in WP.No.24230 of 2015 suffered an Order-in-original No.218/2015, dated 27.03.2015, ordering re-shipment of the gold to the country of origin on payment of redemption fine under Section 125 of the Customs Act, 1962 and penalty under Section 112(a) of the Customs Act, 1962.

Being aggrieved against the said Order-in-original, appeals were filed by the Petitioner as well as the Department to the Commissioner of Customs (Appeals), Chennai, who upon hearing, dismissed the appeal filed by the Department and passed orders in the Petitioner's appeal, in terms of reduction in the quantum of fine and penalty vide C4-I/349 and 350/0/2015-Air dated 29.06.2015. Thereafter, the Petitioner approached the officer of customs in airport for execution of the order showing his willingness to pay the fine and penalty. However, the said order was not executed. Being aggrieved by the inaction, though a letter was given to the Commissioner of Customs (Airport), Chennai dated 15.07.2015, there is no response. Hence, the Petitioner is before this Court.

3. The learned counsel appearing for the Petitioners submitted that having suffered an order in the appeal, it is the bounden duty of the Department to comply with the directions of the Appellate Authority as has been held by the Honourable Supreme Court in AIR 1992 SC 711 (Union of India and others Vs. Kamlakshi Finance Corporation). The learned counsel also brought to the notice of this Court a circular issued by the CBEC in F.No.201/01/2014-CX.6 and further submitted that necessary orders in favour of the Petitioners is to be passed by the authorities and seeks for appropriate directions to that effect.

4. On the other hand, the learned standing counsel for the Respondents, who filed a counter affidavit, would submit that as against the order of the Appellate Authority, the Department filed a Revision along with a stay petition, which is said to be pending and in order to provide an opportunity to the Petitioners to place their submissions, the Revisional Authority issued notice to the Petitioners and the Petitioners can avail the same and agitate their case. He also pointed out to the amendments in Notification No.12/2012, dated 17.3.2012 and in Rule 6 of the Baggage Rules, 1998.

5. This court heard the learned counsel on either side and considered their submissions and also perused the materials available on record.

6. Admittedly, as against the orders passed by the Appellate Authority, the Department moved the Revisional Authority by filing revisions and the Revisional Authority also issued notice to the Petitioners, fixing the date of hearing under Section 129 (DD) of the Customs Act, 1962.

7. In view of the above, the Petitioners are directed to appear and place all their submissions so as to substantiate their case and on upon hearing them, the Revisional Authority is directed to dispose of the revisions, after following the due process of law. The said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

8. With the above directions, these Writ Petitions are disposed of. No costs. Consequently, the connected MP are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The Chief Commissioner of Customs,
O/o.The Chief Commissioner of Customs,
Custom House, Chennai - 600 001.

2. The Commissioner of Customs (Airport)
O/o. The Principal Commissioner of Customs
Commissionerate New Customs House
Meenambakkam Chennai-27.

3. The Assistant Commissioner of Customs (Air Port)
Anna International Airport
Meenambakkam Chennai-27.

+2cc's to Mr.Sundareswaran, Advocate, S.R.No.46663 & 46662
+2cc's to M/s.T.Chenzhian, Advocate, S.R.No.47109

WP.Nos.22438 and 24230 of 2015

RSI(CO)
CA(16/10/2015)