IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.10.2015

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.25714 of 2015 and

M.P.No.1 of 2015

Zakir Ali Khan ... Petitioner

Vs

1 The Commissioner of Customs (Airport) New Custom House Air Cargo Complex GST Road Meenambakkam - 600 027

2 The Additional / Joint Commissioner of Customs New Custom House Air Cargo Complex GST Road Meenambakkam - 600 027

3 The Assistant Commissioner of Customs (Airport - Administration) New Custom House Air Cargo Complex GST Road Meenambakkam - 600 027

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of mandamus directing the respondents herein to cause release of the goods (assorted precious/semi-precious stones weighting 19367 carats and valued at Rs. 11 97 885/-) and permit re-export thereof which is subject matter of adjudication proceedings before the first respondent in O.S. No. 58/07-INT / O.S. No. 712/07-AIU and O - in - O No. 03/2010-COMMR (AIR) dated 14.7.2010.

For Petitioner : Mr.B.Satish Sundar

For Respondents : Mr. S.Hajamohideen Gisti

ORDER

Writ petition is filed for the issuance of a writ of mandamus directing the respondents herein to cause release of the goods (assorted precious/semi-precious stones weighting 19367 carats and valued at Rs. 11 97 885/-) and permit re-export thereof which is subject matter of adjudication proceedings before the first respondent in O.S. No. 58/07-INT / O.S. No. 712/07-AIU and O - in - O No. 03/2010-COMMR (AIR) dated 14.7.2010.

2. The learned counsel for the petitioner submitted that the Officers of Air Intelligence Unit intercepted the petitioner, who arrived from Bangkok on 14.11.2007 on suspicion that he might be carrying high valued goods in commercial quantity. Personal search of the petitioner resulted in the recovery of certain number of packets containing assorted precious/semi-precious stones valued at Rs.20,14,460/-. The same were seized under a mahazar that they were attempted to be smuggled into India by way of mis-declaration and were finally confiscated under the provisions of Customs Act 1962 read with Foreign Trade (Development and Regulation Act 1962), by order dated 28.2.2009.

3. The learned counsel further submitted that the said order dated 28.02.2009 was challenged before CESTAT and as per order dated 30.07.2009 a denova adjudication proceedings had taken place with regard to the seizure of goods from the petitioner and ultimately, the order in original came to be passed on 14.7.2010 with the following conditions.

> "I. I order for confiscation of assorted precious/semi-precious stones totally weighing 19367 carats and re-valued at Rs.11,97,885/- (Rupees Eleven Lakhs Ninety Seven Thousand Eight Hundred Eighty Five only) (CIF) under Section 111(d), 111(i), 111(l) and 111(m) of the Customs Act, 1962. However, I allow the Passenger to redeem the goods and re-export the same by self to the country from where it was imported on payment of a redemption fine of Rs.3,50,000/- (Rupees Three Lakhs Fifty thousand only). In case, the passenger desires to redeem the aforesaid goods for home consumption, duty at baggage rate has to be paid in addition to the redemption fine. This option has to be exercised within 45 days of issue of this Order.
>
> II. I order for confiscation of the material objects viz., 6 nos., of polythene covers and 69 nos., of smaller polythene pouches used for concealing the precious/semi-precious stones under Section 118(a) of the Customs Act, 1962.
>
> III. I impose a penalty of Rs.2,00,000 (Rupees Two Lakhs only) under Section 112 of the Customs Act, 1962 on Shri Zakir Ali Khan for having rendered the aforesaid goods liable to confiscation."

4. Thereafter, within the stipulated time of 45 days, the petitioner was not able to redeem the seized goods and the required penalty amount as well as redemption fine was also not paid.

5. The learned counsel for the petitioner now submits that because of financial constraint, the petitioner's attempt to redeem the goods did not fructify. However, during the month of February 2015, the petitioner came to know that the goods seized are very much available with the authorities, he immediately arranged funds and approached the authorities by communication dated 02.02.2015 marking a

copy to the third respondent for the purpose of exercising the option of redemption for the re-export. The said communication dated 02.02.15 said to have been received by the authority was not taken into consideration.

6. According to the learned counsel for the petitioner, Section 125 of the Customs Act for the purpose of re-export provides redemption. Because of financial constraint, the petitioner was not in a position to redeem the seized goods within the period of 45 days and even after expiry of 45 days as stipulated in the order of Commissioner of Customs, the department was also not able to dispose of the goods till date. According to him, it is undisputed fact that the semi-precious stones under seizure are still available with the respondent-department, having not been sold or disposed of in a manner known to law subsequent to the adjudication proceedings in 2010. In terms of the order passed in adjudication, the petitioner is entitled to redeem the said semi-precious stones on payment of fine in terms of Sec.125 of Customs Act for the purpose of re-export. The petitioner has indicated to the respondents that he is willing and redeem to pay the fine and the penalty imposed so as to take the option of re-export of the goods under seizure / confiscation, the denial is improper and illegal. Hence, the learned counsel for the petitioner seeks appropriate direction for the purpose of redemption and for re-export.

7. The learned standing counsel appearing for the respondent filed a counter and submitted that the petitioner failed to exercise the option within 45 days and the present request after the period of 4 1/2 years, cannot be considered. Hence, he sought to dismiss the writ petition.

8. Heard both sides.

9. Admittedly, the representation of the petitioner followed by the reminders have not been considered. The respondents are obligatory under law to take a decision for allowing re-export of the goods on payment of aforesaid fine and penalty. Not having done so, has caused serious prejudice and hardship to the petitioner, despite the order of the first respondent, allowing redemption of the goods under seizure for confiscation for re-export. The petitioner has not received any notice from any higher forum than the first respondent, by which, the order in adjudication passed by the first respondent is under challenge. In the absence of any appeal against the said order of the first respondent, there is no legal impediment for the respondents to act in terms of the order in adjudication dated 14.7.2010 and cause release of the confiscated goods on payment fine and penalty for the purpose of re-export.

10. There is no denial with regard to the availability of the goods by the customs authorities even after a period of 5 years. The note issued by the Superintendent of Customs dated 21.09.2015 supports the claim of the petitioner. The inaction on the part of the authority is not explained properly in the counter affidavit. In this view also, the continued detention and non-release of the goods at the hands of the respondents cannot be sustained or countenanced. Hence, to give

quietus to the issue, the petitioner is directed to pay redemption charges of Rs.3,50,000/- along with cost of Rs.50,000/-, in total Rs.4 lakhs along penalty of Rs.2 lakhs within a period of two weeks from the date of receipt of a copy of this order and on such payment of Rs.6,00,000/- (Rupees six lakhs only) the respondent shall permit him to redeem the goods strictly for the purpose of re-export within a further period of two weeks, thereafter. After redemption, if any violation is found out, it is always open to the authority to proceed against the petitioner in accordance with law.

11. The writ petition is disposed of accordingly. Consequently, connected miscellaneous petition is closed. No costs.

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Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub-Assistant Registrar

To

1 The Commissioner of Customs
(Airport) New Custom House Air Cargo
Complex GST Road,
Meenambakkam - 600 027

2 The Additional / Joint
Commissioner of Customs, New Custom House
Air Cargo Complex GST Road,
Meenambakkam - 600 027

3 The Assistant Commissioner of
Customs (Airport - Administration) New
Custom House Air Cargo Complex GST Road
Meenambakkam - 600 027

+1 C.C. To MR.B.Sathish Sundar, Advocate in SR.NO.55034

+1 C.C. To MR.S.Haja Mohideen Gisthi, Advocate in SR.NO.55038

W.P.No.25714 of 2015

SD : 19/10/2015