IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.10.2015

CORAM:

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

W.P.No.31866 of 2015
and
M.P.Nos.1 and 2 of 2015

H.Mohamed Abdul Kadar ... Petitioner

-Versus-

The Additional Commissioner of Customs,
[Adjudication - Air],
New Customs House,
ACC, G.S.T.Road,
Meenambakkam, Chennai 600 027. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India for the relief of issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order-in-original No.260/2015 dated 01.09.2015 passed by the respondent and to quash the above said order insofar as it relates to absolute confiscation of the seized two numbers of gold bits and the consequent imposition of penalty of Rs.1,10,000/- under Section 112(a) and (b) of The Customs Act, 1962 and for a consequential direction to the respondent to provisionally release the gold seized vide Mahazar dated 18.02.2014 in terms of Section 110A of The Customs Act, 1962.

For Petitioner : Mr.Hari Radhakrishnan

For Respondent : Mr.Rajinish Pathiyil,
Senior Standing Counsel for
Customs & Excise

ORDER

Challenging the impugned order of confiscation dated 01.09.2015 passed by the respondent, the petitioner has come forward with this writ petition.

2. The petitioner visited KualaLumpur, Malaysia and returned to Chennai on 18.02.2014. At that time, in the customs declaration card, he declared that he was bring 42" Sony LED TV and proceeded to Red Channel for payment of duty on the said LED TV where he was questioned by the Superintendent of Customs AIR intelligence Unit (AIU), Chennai and he and himself and his baggage were subjected to detailed examination. According to the respondent, during such examination, the petitioner was found concealing 351 grams of gold. Accordingly, the gold bits (2 Nos.) were seized under a mahazar alleging that he concealed the same with an intention to smuggle the same and his travel documents and customs declaration card were seized. The LED TV which was properly declared was also detained by the authority.

3. It is the case of the petitioner that during the course of inquiry by the authority, a statement was forcibly obtained from him and in fact, he had retracted the same by letter dated 28.03.2014. Thereafter, when he approached the authority for the provisional release of goods seized in terms of Section 110-A of the Customs Act, 1962, there was no action. Aggrieved by the in action of the authority, the petitioner earlier approached this court by way of writ petition No.9982 of 2014 for a mandamus directing the authority to provisionally release the seized gold and this court by order dated 10.10.2014 directed the petitioner to submit appropriate reply to the show cause notice and to participate in the adjudication process with liberty to approach the adjudicating authority for the provisional release of the goods. According to the petitioner, when he made a request for the provisional release of the seized goods, the authority did not consider the same, but, directed him to participate in the adjudication proceedings. The authority proceeded further with the adjudication process without even considering the repeated requests made by the petitioner for the provisional release of seized goods and, in fact, fixed a date for personal hearing of the petitioner. Aggrieved by the same, the petitioner filed W.P.No.8173 of 2015 for early release. This court by order dated 04.08.2015 directed the petitioner to appear in person on 14.08.2015 at 02.30 p.m. without fail and directed the authority to pass appropriate orders on the application made by the petitioner for the provisional release of seized goods on merits and in accordance with law within a period of two weeks thereafter by taking into consideration of the provisions of Section 110-A of the Customs Act, 1962.

4. Thereafter, according to the petitioner, pursuant to the directions of this court, the respondent took up the application for the provisional release of seized goods and passed an order in original No.260/2015 dated 01.09.2015 thereby refusing to order for the provisional release of the goods and ordered to confiscate the same and also imposed a penalty of Rs.1,10,000/- under Section 112(a) and (b) of the Customs Act, 1962. It is the said order now under challenge in this writ petition.

5. The grievance of the petitioner is that the authority did not at all consider the legal position and the authority has passed the impugned order flouting the directions of this court in the earlier round of litigation. Thus, the order impugned in the writ petition which was passed in gross violation of the order of this court, is liable to be set aside.

6. Heard both sides and also perused the records carefully.

7. On an earlier occasion, this court directed the respondent/authority to consider the representation of the petitioner under Section 110-A of the Customs Act, 1962 and the petitioner accordingly appeared before the respondent / authority and thereafter, an order in original came to be passed on 01.09.2015 wherein in paragraph 15 the authority has held thus:-

> "15. I find that Hon'ble High Court of Madras vide order dated 09.08.2015 in W.P.No.8173/2015 has directed the respondents to consider the provisional release of the gold in accordance with law within two weeks in terms of Section 100-A of the Customs Act 1962. In this regard, I notice that as Adjudicating Authority, I have to decide the Show Cause Notice dated 19.08.2014 wherein it was proposed to confiscate the gold under Section 111(d) and (i) of Customs Act, 1962 and to impose penalty on the passenger under Section 112 (a) of the said Act. In these proceedings, the provisional release in terms of Section 110(A) of Customs Act, 1962 does not come in to picture. Under Section 110(A) , the goods can be released provisionally pending adjudication but as Show Cause Notice already issued in the matter on 14.08.2014

and hearing is also over, the appropriate legal action at this juncture is to conclude the adjudication proceedings on merits of the case. In view of these facts and circumstances of the case, provisional release cannot be considered at this juncture."

8. The above said observations made in the impugned order in original would apparently run against the directions made by this court on the earlier round of litigation. Such observations would also fortify the predetermination of the authority concerned in confiscating the seized goods. Thus, for these reasons, the impugned order is liable to be set aside.

9. In the result, the writ petition is disposed of, the impugned order is set aside and the matter is remitted back to the respondent authority for passing appropriate orders afresh under Section 110-A of the Customs Act on merits and in accordance with law. Such exercise shall be completed within a period of two weeks from the date of receipt of a copy of this order. Thereafter, it is always open to the respondent/authority to take up the main adjudication proceedings and to pass appropriate orders on merits and in accordance with law. No costs. Consequently, connected MP is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

kmk

To

1.The Additional Commissioner of Customs,
[Adjudication- AIR],
New Customs House,ACC, G.S.T.Road,
Meenambakkam,Chennai 600 027.

+1cc to Mr.Rajinish Pathiyil, Advocate, S.R.No.56065
+1cc to Mr.Hari Radhakrishnan, Advocate, S.R.No.56798

W.P.No. 31866 of 2015

SR(CO)
CA(27/10/2015)