IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 26.3.2015.

CORAM

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.3333 and 4428 of 2015
and
M.P.No.1 of 2015

Shri.Aliyar Syed Thaha Mohamed Jalal ...Petitioner in both WPs

vs.

1 Additional/ Joint Secretary
Revision Application
Ministry of Finance
Department of Revenue
No.14 Hudco Vishala Building
BV 5th Floor Vhikaji Cama Place
New Delhi-110 066.

2 Commissioner of Customs (Appeals)
60 Rajaji Salai Custom House
Chennai 600 001.

3 The Joint Commissioner of
Customs (UB-SEA)
O/o.Commissioner of Customs (Imports)
60 Rajaji Salai Custom House
Chennai 600 001. ...Respondents in both WPs

Writ Petition filed No.3333 of 2015 filed under Article 226 of the Constitution of India seeking issuance of a writ of mandamus directing the respondents to release/ return the seized goods belonging to the petitioner which are live consignment pursuant to the Order in Original No.24576/ 2014 dated 26.3.2014 passed by the 3rd respondent and now pending as Revision Petition before the 1st respondent.

Writ Petition filed No.4428 of 2015 filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus calling for the entire records pertaining to Order in Appeal No.C.Cus II No.84/2014 dated 31.10.2014 on the file of the 2nd respondent confirming the Order in Original No.24576/ 2014 dated 26.3.2014 passed by the 3rd respondent and quash the same, thereby directing the respondents to release/ return the seized goods belonging to the petitioner.

For Petitioner : Mr.T.R.Senthil Kumar

For R1 : Mr.Mohanamurali

For RR2 and 3 : Mrs.Mallika Srinivasan
(Customs and Central Excise Standing Counsel)

COMMON ORDER

Petitioner has come forward with the aforesaid prayers.

2. It is not in dispute that items mentioned in one writ petition are household articles and fancy items whose cost is 6073 US $ and that the issue with regard to other writ petition is also covered by decision of the CESTAT in the case of NARESH LOKUMAL SERAI v. COMMISSIONER OF CUSTOMS (EXPORT), RAIGAD, wherein it has been observed as under:-

> "9. After hearing both sides, perusal of the records and case laws relied upon by both sides, we find that the submissions made by the ld. Counsel for the appellant deserve to be accepted. We find that the appellant had, by enclosing a detailed packing list along with the BDF, declared and disclosed to the department the contents of his baggage. This is the primary requirement of Section 77 of the Customs Act which provides that the owner of any baggage shall, for the purpose of clearing it, make a declaration of its contents to the proper officer. There is no statutory obligation cast on the passenger to also declare the value of such baggage in the BDF. The BDF filed by the appellant in the present case gives a list of 14 used personal effects for which a value of Rs.4.5 lakhs was declared. The 237 items which are listed in the packing list attached to the BDF are not the same as the 14 items for which the value of Rs.4.5 lakhs was declared. It is thus evident

> that in respect of these 237 items, the BDF did not declare any value at all. It is only in the statement of the appellant recorded under Section 108 that he declared the purchase price of the 237 items as equivalent to Dirham 5.25 lakhs. This statement of the appellant has been relied upon in the show cause notice. We have to examine whether this value should have been accepted for assessment purposes or not."

3. It is the admitted case that the matter is pending before the revisional authority. Without prejudice to the rights of the parties in the revision petition, this court directs the authorities to release the goods which are subject matter of the writ petitions. On an application made by the petitioner, the goods shall be released within a period of four weeks from that date. However, this court makes it clear that there should not be any demurrage as there is no fault on the part of the petitioner.

4. The writ petitions are disposed of accordingly. No costs. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

ssk.

To

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2 CCs to Mr.T.R.Senthil Kumar, Advocate SR.No. 17153

2 CCs to Mrs.Mallika Srinivasan (Customs and Central Excise Standing Counsel), SR.No. 17239, 17351

1 CC to Mr.Mohanamurali, Advocate SR.No. 17114

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JP (CO)
PSI (17.04.2015)