

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.10.2015

Coram

The Honourable Mr.Justice R.MAHADEVAN

W.P. No.5700 of 2015

Mr.Arul James
Proprietor,
M/s.JMS Exports,
No.7th Street, Gandhi Nagar,
Vysarpadi,
Chennai-600 039.

... Petitioner

Vs.

1. The Additional Director General,
Directorate of Revenue Intelligence,
T.Nagar, Chennai-600 017.
 2. The Joint / Additional Commissioner of Customs,
(Group 5-A), Customs Commissionerate-II,
Chennai-600 001.
- ... Respondents

Writ Petitions filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the respondents to order for the release of the T.V.sets-25 pieces of Sony LED TV 32'' and 175 pieces of Sony LED TV 40'' totaling 200 T.V. sets declared by the Petitioner vide Bill of Entry No.5901603 dated 24.06.2014 to the Petitioner after re-determining the value of the goods pending adjudication proceedings in Show Cause Notice No.F.No.DRI/CZU/VIII/48/ENQ-I/INT-24/2014 dated 24.12.2014 issued by the 1st respondent and to be adjudicated by the 2nd respondent.

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For Petitioner : Mr.M.Abdul Nazeer

For 1st Respondent : Mr.Velayutham Pitchaiah

For 2nd Respondent : Mr.Rajnish Pathiyil, SCGSC

O R D E R

The petitioner's Bill of Entry along with the goods were subjected to inspection and accordingly, the respondents found concealment of gold within the Pallet boxes of the TVs imported. Out of the 9 boxes imported, concealment of gold were found in two boxes which were numbered as 8 and 9. The respondent seized all the pallet boxes and thereafter assessed the consignment and valued it at Rs.1,42,70,000/-. The petitioner moved an application on 08.12.2014 for early release of those TV sets available in the said pallet boxes.

2. After notice, both the respondents have filed their counter affidavit. The 1st respondent in paragraph 4 of his counter has stated as follows:-

"It is respectfully submitted that in pursuance to the said intelligence, the said import consignment was examined on 26.06.2014. On examination of the said container, it is found to contain LED TVs in palletized condition and all the pallets with LED TVs were removed one by one and placed in an open space for detailed examination. On examination of the first pallet, it was found that the entire pallet was wrapped in plastic transparent plastic sheet and on removal of the transparent packing paper found wrapped on the TVs, it was found to contain 25 pieces of Sony LED TV 32'' and 175 pieces of Sony LED TV 40'' Nos. The officers found that there were totally nine pallets. Then the officers dismantling the pallets used to pack the said LED TVs for the possible concealment of gold bars in the pallets by removing and breaking the wooden reapers of all the pallets. During this process, the officers while dismantling the pallet No.8 and 9 by removing the vertical wooden reapers one by one, the officers found the wooden blocks in the middle of the reaper covered with black colour

insulation tape pasted on it. The officers removed the black colour insulation tape and found a cavity in the said two wooden block and found two packets covered with black colour insulation tape concealed inside the cavities and further gap filled with white colour packing paper. Then the officers marked the wooden blocks as B1 and B2 and broke open the wooden blocks. On breaking open the wooden blocks, the officers found one black colour packet each, covered with black insulation tape and both weighting heavily. The officers removed the black colour insulation tapes in the black packet and found inner packing was made with a Singapore newspaper. On removing the said piece of newspaper, the officers found the gold bars with markings 'RAND REFINERY 9999 FINE GOLD 1000g' with seal numbers TQB62207 and TQB62208'. The officers then removed the black insulation tapes of the packet found in another pallet and found three gold bars with markings 'RAND REFINERY 9999 FINE GOLD 1000g' with serial number TQB62203, TQB 62204 and TQB62206. Accordingly, the officers found a total of five gold bars with foreign markings of 1000gms each. The officers then seized the five gold bars totally weighing 5000 grams and valued at Rs.1,42,70,000/- along with the 200 pieces of LED TV sets with the market value of Rs.1,25,85,000/- used as cover cargo by M/s.JMS Exports, Chennai for concealing the said foreign marked gold bars, under the provisions of Customs Act, 1962.'

3. Similarly, paragraph 7 of the counter affidavit states that the pallet boxes which were used as concealment was also liable to be confiscated. During the course of argument, the learned counsel for the 1st respondent submitted that the gold was concealed in pallet box Nos.8 and 9 marked as B1 and B2 and the department has no objection for the release of the remaining 7 pallet boxes on certain terms. The said submission made by the learned counsel for the 1st respondent is recorded.

4. Hence, to give quietus to the issue, the petitioner is hereby directed to furnish 100% Bank Guarantee **"for the duty assessed on the value of the goods"** within a week from the date of receipt of a copy of this order. On such furnishing of Bank Guarantee, the respondents shall release 7 pallet boxes except boxes 8 and 9 (B1 and B2). The other adjudication

proceedings in accordance with the Customs Act may go on and the same shall be completed within a period of eight weeks. The Writ Petition is disposed of in the above terms. No costs.

Sd/-
Assistant Registrar (CS-II)
Dated: 19.10.2015

***Modified the order as per
order of this court dated
29.10.2015**

**Sd/- Assistant Registrar (CS-II)
Dated : 02.11.2015**

/True Copy/

Sub-Assistant Registrar

ssn/gp

To

1. The Additional Director General,
Directorate of Revenue Intelligence,
T.Nagar, Chennai-600 017.
2. The Joint /
Additional Commissioner of Customs,
(Group 5-A), Customs Commissionerate-II,
Chennai-600 001.

To be substituted
to the order already
despatched on
26.10.2015

- 1 CC To Mr.M.Abdul Nazeer, Advocate in SR.NO.57282
1 CC to Mr.Velayutham Pichaiya, Advocate SR 59421
1 CC to M/s.Rajnish Pathiyil, Advocate 59612
+1cc to Mr.Abdul Nazeer, Advocate Sr.59929 [4/11/2015]

W.P. No.5700 of 2015

SSV(CO)
sd : 19/10/2015

PSI 02.11.2015

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