IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.11.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.9192 of 2014

Ramasamy ... Petitioner

Vs.

1 The Joint Secretary to Govt. of India
Ministry of Finance
Department of Revenue
14, HUDCO Vishala Building, B Wing
6th floor, Bhikaji Coma Place
New Delhi 110 066

2 The Commissioner of Customs (Appeals)
Custom House
Chennai

3 The Additional Commissioner of Customs (Air Port)
Meenambakkam
Chennai. ... Respondents

Writ Petition has been filed under Article 226 of the Constitution of India to issue Writ of Certiorari to call for the records relating to the order passed by the 1st respondent in order NO.182/13-Cus dated 19.8.2013 (F.No.373/15/B/13-RA) and quash the same as arbitrary, without jurisdiction, without authority of law and unsustainable.

For Petitioner : Mr.K.Jayachandran

For Respondents :Mrs.Hema Muralikrishnan, SSC

O R D E R

Heard Mr.K.Jayachandran, learned counsel for the petitioner and Mrs.Hema Muralikrishnan, learned Senior Standing Counsel for the respondents.

2. The petitioner in this Writ Petition has challenged the order passed by the first respondent, who is the revisional authority, exercising power under section 129 DD of the Customs Act, 1962 against the order passed by the second respondent. In

the instant case, the third respondent passed an order, confiscating the Gold jewellery carried by the petitioner on the ground that it was not declared and the petitioner in his voluntary statement stated that he was carrying the Gold jewellery given by some other person in Singapore to deliver the same to his family without declaring to the customs. Therefore, the third respondent by order dated 11.10.2011 ordered confiscation of the Gold Jewellery under section 111 (d), (l), and (m) of the Customs Act, 1962 read with Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992. Apart from that, penalty of Rs.32,000/- was imposed on the petitioner under section 112(a) of the Customs Act, 1962.

3. Aggrieved by the said order, the petitioner preferred an appeal to the appellate authority. Before the appellate authority, the petitioner was represented by a counsel. The appellate authority by an order dated 25.9.2012 held that the petitioner was in possession of Gold Jewellery when he arrived from abroad and the same was not declared by the appellant. Further, as per Notification No.31/2003-Customs dated 1.3.2003, "eligible passenger" means a passenger of Indian origin or a passenger holding a valid passport, issued under the Passport Act, 1967, who is coming to India after a period of not less than six months of stay abroad and short visits, if any, made by the eligible passenger during the period of six months will be ignored if the total duration of stay on such visits does not exceed thirty days and such passenger has not availed of the exemption under the Notification No.31/2003 or under the Notification being superseded at any time of such short visits. The Appellate authority further observed that the petitioner does not fulfil the conditions as envisaged in Notification No.31/2003 and he is not an eligible passenger. Further more, commenting on the conduct of the petitioner, it was observed that the petitioner did not make true and proper declaration of the Gold in his possession and attempted to smuggle the same and passed through the Green Channel in order to evade payment of customs duty. Thus, by giving independent reasons, the second respondent confirmed the order of the third respondent, ordering absolute confiscation, as against which the petitioner filed a revision petition before the first respondent. By placing various contentions both on facts and law, the petitioner prayed for permission to re-export the Gold. The revisional authority heard the petitioner, who was represented by a counsel. The revisional authority considered the matter and passed the impugned order, rejecting the revision petition, which is said to be assailed by the petitioner.

4. Learned counsel for the petitioner reiterated the contentions put forth before the revisional authority as well as the Commissioner of Customs (Appeals). Further it is submitted

that the Gold Jewellery is not a prohibited item and the Notification No.31 of 2003 provides for a rate of duty payable. Further it is submitted that in the instant case, the petitioner only sought for re-export, which can be considered by this Court.

5. Before going into the merits of the contentions raised by the petitioner, it has to be pointed out that this Court, exercising jurisdiction under Article 226 of the Constitution of India, will not examine the correctness of the order passed by the first respondent as if acting as a second appellate authority. Three authorities, namely respondents 3, 2 and 1 have recorded factual findings after considering the matter and the case as put forth by the petitioner. Further more, the petitioner has been given full and effective opportunity to raise all contentions before the first and second respondents. Therefore, this Court will consider as to whether the impugned order suffers from any perversity or non-application of mind.

6. On a perusal of the impugned order, it is seen that the first respondent has given independent reasons as to why the revision petition does not merit consideration. The petitioner cannot take umbrage to Notification No.31/2003 dated 1.3.2003 as he does not fall within the definition of "eligible passenger". That apart, the authorities have concurrently recorded that the petitioner did not file true and correct declaration and attempted to smuggle the Gold Jewellery. That apart, while ordering absolute confiscation, the first respondent has referred to a decision of the Bombay High Court in the case of Union of India vs. Mohammed Aijaj Ahmed, reported in 2009 (244) ELT 49 (Bombay), which has been upheld by the Hon'ble Supreme Court in the decision reported in 2010 (253) ELT E 83(SC). In the light of the independent reasonings given by the first respondent, this Court is not inclined to interfere with the factual reasons recorded and consequently, the petitioner has not made out any case for interference.

7. For all the above reasons, the writ petition fails and the same is dismissed. No costs.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

To

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+1 cc to M/s.Hema Murlaikrishnan,advocate,sr.64290

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