

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2016

CORAM

THE HONOURABLE Mr. JUSTICE M.DURAI SWAMY

W.P.No.1142 of 2016

K.H.Mohamed Ismail (Alias)

Kose Hajamohideen Mohamed Ismail

.. Petitioner

vs.

1 The Commissioner of Customs-Airport
Customs House
Meenambakkam
Chennai-600 027

2 The Joint/Additional Commissioner
of Customs-Airport
Customs House
Meenambakkam
Chennai-600 027

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents to provisionally release the goods viz. 466.56 gms. gold seized by the respondent authorities vide Mahazar dated 23.12.2015 pending adjudication in O.S.No.1366 of 2015 on the file of the respondents.

For Petitioner

: Mr.N.Murali Kumaran

For Respondent

: Ms.Mallika Srinivas

Standing Counsel

ORDER

The petitioner has filed the above writ petition to issue a writ of Mandamus to direct the respondents to provisionally release the goods, viz. 466.56 gms. gold seized by the respondent authorities vide Mahazar dated 23.12.2015 pending adjudication in O.S.No.1366 of 2015 on the file of the respondents.

2. It is the case of the petitioner that on 23.12.2015, he brought 466.56 gms. gold, by placing them in his pant pockets along with his other baggages and boarded the flight from Abu

Dhabi and landed Chennai around 2.20 p.m. When he was proceeding towards the immigration to the immigration desk in the International Terminal, he was intercepted by the officials of the respondents. The petitioner declared that he was possessing gold weighing 466.56 gms. duly packed and showed them the bill for having purchased the same. According to the petitioner, he had no intention to hide the possession of gold with him. The authorities seized the gold in the possession of the petitioner and informed that proceedings will be initiated against him for possessing of the same. When the gold was seized under the Mahazar by the officials of the respondent, the petitioner contended that he is entitled for provisional release of the gold under section 110A of the Customs Act, as the said provision for the Customs Act duly enables him to have the goods released provisionally. On 28.12.2015, the petitioner gave a representation to the respondents, however, the respondents have not released the gold seized from the petitioner.

3. The respondents filed their counter wherein they have stated that on arrival, the petitioner was intercepted at the Exit by Superintendent (AIU) when the petitioner attempted to walk out through the Green Channel along with one hand baggage and one checked in baggage, on a reasonable suspicion that he might be carrying gold/contraband goods either in his baggage or on his person. Upon questioning as to whether he is carrying any gold/contraband either in his baggage or on his person, the petitioner replied in negative and not being satisfied with the passenger's declaration and noticing that the petitioner to be nervous, the petitioner along with his baggage consisting of one hand baggage and one checked in baggage was brought to AIU room for a detailed examination of his baggage and search of his person. Search of the person in the presence of Superintendent (AIU) and in the presence of the witnesses resulted in the recovery of four yellow coloured metal bars kept concealed in the grey colour pant worn by the passenger which were totally weighing 466 grams and suspected to be gold. According to the respondents, gold bars are liable for confiscation under section 111(d) and (1) of the Customs Act. Further, the respondents relied upon an order passed by this court in W.P.No.25517 of 2015 seeking for provisional release of the seized gold liable for confiscation under section 111(d) and 111 (1) of the Customs Act, dated 24.11.2015.

4. Now it is brought to the notice of this court that adjudication has not been commenced by the respondents.

5. Learned Counsel appearing for the respondents relied upon the orders of this court made in W.P.Nos. 5663, 3656 & 3857 of 2014, dated 04.07.2014 and 29.04.2014 respectively, wherein this court released the gold to the petitioner therein imposing some conditions.

6. Since it is brought to the notice of this court that the adjudication has not yet been commenced, I am of the considered view that the petitioner can seek for release of the gold seized by the respondent after the completion of the adjudication. Since the respondents have not commenced the adjudication, I direct the respondents to commence the adjudication at the earliest and complete the adjudication within a period of twelve weeks from the date of receipt of a copy of this order. The petitioner can seek for release of the gold after the completion of the adjudication.

7. In these circumstances, I do not find any merit in the writ petition. Learned counsel for the petitioner submitted that liberty may be given to the petitioner to file appropriate application under section 110 A of the Income Tax Act and the respondents may consider the same in accordance with law. It is open to the petitioner, to file an application before the respondent under section 110-A of the Customs Act along with the copy of this order and the respondents are at liberty to decide the same on merits and in accordance with law.

With these observations, the writ petition is dismissed. No costs.

sd/-

Assistant Registrar (Cs-VII)

/TRUE COPY/

Sub-Assistant Registrar

Rj

To

1 The Commissioner of Customs-Airport
Customs House
Meenambakkam , Chennai-600 027

2 The Joint/Additional Commissioner
of Customs-Airport
Customs House
Meenambakkam , Chennai-600 027

+1 CC to Ms.Mallika Srinivas Advocate. SR.NO. 8164

+1 CC to M/s.McGan Law Firm Advocate. SR.NO. 8270

W.P.No.4008 of 2016

CO-AK

JD 16/02/2016