IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE D.KRISHNA KUMAR

W.A.Nos.954 and 1056 of 2014
M.P.Nos.1, 1 and 2 of 2014

1. The Additional Director General,
Directorate General of
Revenue Intelligence,
No.25, Gopalakrishnan Road,
Chennai 600 017.

2. The Senior Intelligence Officer,
Directorate General of
Revenue Intelligence,
No.25, Gopalakrishnan Road,
Chennai 600 017. ..Appellants in W.A.No.954/14 /Respondents 2 and 3 in W.A.No.1056 of 2014

3. The Joint Additional Commissioner
of Customs (Airport),
New Customs House,
Meenambakkam, Chennai-27. ..Appellant in W.A.No.1056/14

versus

Mr.Abhishek Mundra .. Respondent in W.A.No.954/14 /1st Respondent in W.A.No.1056 of 2014

Writ Appeals are filed under Clause 15 of the Letter Patent, against the order, made in M.P.No.3 of 2014 in W.P.No.5663 of 2014, dated 04.07.2014. Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to issue an order of interm directions directing the respondents to provisionally release the 15.160 Kg. of Gold Bars belonging to the petitioner seized with Mahazar dated 14th October 2013 drawn by the officials of the respondents from the petitioner at Kamaraj Domestic Terminal Meenambakkam Chennai in terms of section 120 B of the customs Act 1962 pending WP.5663 of 2014.

For Appellants
in W.A.954 of 2014: Mr.Velayutham Pichaiya
Respondents 2&3 in WA.1056/2014

For Appellant
in W.A.1056 of 2014: Mr.T.Chandrasekaran

For respondent : Mr.V.T.Gopalan, Senior Counsel
for M/s.M.C.Gan Law Firm for R1

ORDER
(Order of the Court was made by S.MANIKUMAR, J.)

W.A.No.954 of 2014 is filed by the Additional Director General and Senior Intelligence Officer, Directorate General of Revenue Intelligence, Chennai, against the order made in M.P.No.3 of 2014 in W.P.No.5663 of 2014, dated 04.07.2014.

2. W.A.No.1056 of 2014 is filed by the Joint Additional Commissioner of Customs (Airport), Chennai, against the order made in M.P.No.3 of 2014 in W.P.No.5663 of 2014, dated 04.07.2014.

3. Order challenged in both the appeal is an interim direction, directing the appellants to provisionally release 15.160 Kgs., of Gold Bars to the respondent, seized vide Mahazar, dated 14.10.2013, drawn by the officials of the appellant, from the respondent, Mr.Abhishek Mundhra, at Kamaraj Domestic Terminal, Meenambakkam, Chennai, in terms of Section 110-A of the Customs Act, 1962, pending disposal of W.A.No.5663 of 2014.

4. Material on record discloses that earlier, while admitting W.P.No.5663 of 2014, this Court, by order, dated 25.02.2014, issued directions to provisionally release the gold, subject to certain conditions. Being aggrieved by the same, the appellants have preferred W.A.No.412 of 2014. After going through the materials on record, a Hon'ble Division Bench of this Court, vide order, dated 03.04.2014, at Paragraph 5, ordered as hereunder:

> "5. Aggrieved by the order passed by the High Court, Khazan Singh has filed this appeal. It was submitted by the learned counsel for the appellant that the Collector's order appointing the appellant having become final as it was not set aside by any of the appellate authorities, no direction could have been given by the Collector to invite fresh applications and decide who should be appointed as the Lambardar. In our opinion, this contention deserves to be accepted. Even the learned counsel for the respondent conceded that so long as the appointment of Khazan Singh as

Lambardar is not cancelled, it is not permissible to invite fresh applications.....”

5. Before the Writ Court, the respondent has contended that he was engaged in the business of buying and selling Gold and Silver Bullion Bars from banks and local dealers. All the purchases and sales of gold and silver bullion bars are covered by proper and valid documents. He also contended that he was also registered with commercial tax department and an assessee on its file. According to him, during the course of such business, on 14.10.2013, the respondent carried 15193 grams of scrap gold for manufacturing purposes from Kolkatta by flight to Chennai. He was authorised to carry gold items. Carrying gold was disclosed to the authorities. Therefore, before the Writ Court, contention has also been raised that the appellants have issued a show cause notice to him, which is the subject matter of another writ petition, pending before this Court.

6. Reliance was also made by the respondent to a decision of the Hon'ble Apex Court in Commissioner vs. Navasakthi Industries Private Limited) reported in 2011 (269) ELT A 146 (SC), wherein, the Hon'ble Supreme Court has issued directions to release the gold articles, subject to certain conditions. Reliance has also been made to an order passed by a Division Bench of this Court in W.A.No.582 of 2011, wherein, this Court has directed the appellants to release the gold jewellery, on depositing 50% of the entire customs duty.

7. Per contra, before the Writ Court, the appellants have contended that the goods in question have been purported to be smuggled goods from Bangladesh and therefore, if the gold articles are ordered to be released, the respondent may conveniently erase the foreign markings embedded in those gold articles and in which event, the department would not in a position to effectively conclude the adjudication proceedings. It is also their contention that in connection with the adjudication proceedings, a show cause notice has been issued to the respondent, which is subject matter of challenge in another writ petition. Therefore, the appellants have contended that in the event of goods being released to the custody of the respondent, it would be prejudicial to the interests of the Department.

8. Having regard to the above rival submissions and by observing that whether the seized gold is a smuggled goods or not, as contended by the appellants, it can be gone into only during the adjudication proceedings, wherein, the respondent should be in a position to produce documentary evidence and inasmuch as adjudication proceedings have already been commenced, by issuing a show cause notice, subject matter of other writ petition and further observing that no useful purpose would be served, by allowing the gold items to remain in the

custody of the appellants, directed to release the same, subject to the following conditions,

> "i) The respondents shall, before releasing the gold articles to the custody of the petitioner, shall take necessary photograph and/or videograph in such a manner that the foreign marking, if any or other markings in the gold bars are visible so that it shall be used during the adjudication proceedings.
>
> ii) The petitioner shall pay 100% duty towards the value of the goods as may be assessed by the officials of the respondents which was prevailing as on the date of seizure within a period of five days from the date of receipt of a copy of this order and the respondents also take video/photograph as stated in para 14 (i) above within the said period of five days.
>
> (iii) The petitioner shall execute a personal bond covering the entire value of the goods in question.
>
> (iv) The petitioner is directed to cooperate with the respondents in commencing and completing the adjudication proceedings initiated by the respondents.
>
> (v) The petitioner is also directed to produce necessary document as and when they are required to do so by the officials of the respondents.
>
> (vi) On compliance of condition Nos. (ii) and (iii) mentioned above, the respondents are directed to release the 15.160 kg of Gold Bars to the petitioner forthwith."

9. Being aggrieved by the same, the appellants have filed the present Writ Appeals.

10. Though several grounds have been raised, assailing the correctness of the interim direction in M.P.No.3 of 2014 in W.P.No.5663 of 2014, dated 04.07.2014, perusal of the same shows that one of the grounds raised is that, whether the Writ Court was justified in ordering conditional release of gold, weighing 15.160 Kgs., of cut pieces of foreign origin gold bars, which according to the appellants, were surreptitiously smuggled into India from Bangladesh, without declaring the same to the customs, which, if proved, are liable to be absolutely confiscated, under Section 111 of the Customs Act.

11. The other ground raised is that considering the nature of offence, allegedly committed by the respondent and the modus operandi adopted to smuggle the gold bars into India, and subsequently transport the same in domestic sector to avoid the checks by Customs in domestic airports, with an intention to

completely evade Customs, the Writ Court ought not to have provisionally released the seized gold, which is against the principles laid down by the Hon'ble Supreme Court in Sheikh Mohd Omer v. Collector of Customs, Calcutta reported in 1983 (13) ELT 1439.

12. Added further, learned counsel appearing for the appellants submitted that in this Court is not inclined to set aside the order impugned, considering the fact that the seized gold is liable for confiscation, in the event of the adjudication proceedings going against the respondent, stringent conditions be imposed, to safeguard the interests of the revenue.

13. Per contra, Mr.V.T.Gopalan, learned Senior Counsel appearing for the respondent submitted that gold is not a prohibited good. He further submitted that the respondent is a reputed dealer in the business of buying and selling Gold and Silver Bullion Bars. He also submitted that the amount of gold carried is entered in the books of accounts of the dealer.

14. Inviting the attention of this Court that already sufficient safeguards are provided in the interim order, dated 04.07.2014, learned Senior Counsel for the respondent submitted that besides payment of 100% duty on the quantity of gold, Writ Court has further directed to the respondents to execute a personal bond covering the entire value of the goods in question. It is also his submission that though the appellants have assailed the correctness of the order impugned, there is no specific ground for imposing any further contentions for provisional release of the gold.

15. Learned Senior Counsel for the respondent submitted that in the event of this Court, imposing any further condition in addition to what the Writ Court had already ordered, the respondent would volunteer to offer bank guarantee for a sum of Rs.20,00,000/- (Rupees Twenty Lakhs Only). It also his contention that the conditions, if any, to be imposed by this Court, should not be onerous. According to him, the conditions ordered by the Writ Court, are just and reasonable.

Heard the learned counsel appearing for the parties and perused the materials available on record.

16. Case of the appellants is that the Directorate of Revenue Intelligence, Chennai Zonal Unit (CZU-DRI in short) received specific intelligence that the respondent arriving at Chennai Domestic Airport from Kolkata on 14.10.2013, by Spice Jet Flight, was carrying gold bars, smuggled into India through Bangladesh. On a detailed examination of his hand baggage, in the presence of independent witnesses, it was found that the

respondent was carrying 296 rectangular cut pieces of gold bars of varying sizes and shape. These were cut bars from regular size gold bars and that the markings on the gold bars were deliberately attempted to be erased to avoid detection of foreign markings and that the said gold bars have been made to appear crude. Most of these bars had traces of markings such as, "10 TOLA", "999.0", "DUBAI-UAE" and "G" on their surface. Weight of these 296 rectangular cut pieces of gold bars was 15.160 Kgs. The Government of India approved assayer, on examination, certified that the said 296 rectangular cut pieces of gold bars to be of 24 carat purity (999 purity) and valued the same as Rs.4,53,89,040/-.

17. Further case of the appellants is that the respondent did not have documents to show that there is legal import of the said 15.16 Kgs., of cut pieces of foreign origin gold bars. Statements have been obtained from the respondent and one Mr.Gautom Chakraborty and others. However, they disputed the same, as obtained under coercion.

18. Material on record discloses that a show cause notice has been issued on 13.04.2014, under Section 124 of the Customs Act, 1962, proposing to confiscate the seized 15.16 Kgs., of gold bars of foreign origin, valued at Rs.4,53,89,040/-, under Sections 111(d) and 111(I) of the Customs Act, 1962 and imposition of penalty, on the respondent and others. Though the respondent seemed to have produced an authorisation letter, dated 13.10.2013, to carry gold from Kolkatta to Chennai, it is the contention of the department that the said authorisation letter is a fabricated document to bring smuggled gold bars to Chennai.

19. Though it is the contention of the appellants that the subject gold, weighing 15.16 Kgs., is smuggled and liable for confiscation, the respondent has denied the same. Conditions imposed in M.P.No.3 of 2014 in W.P.No.5663 of 2014, dated 04.07.2014, inter alia, are to the effect that the respondent should pay 100% duty to the value of the goods, as may be assessed by the officials of the respondents; he shall execute a personal bond covering the entire value of the goods in question; and the appellants shall take necessary photograph and/or videograph in such a manner that the foreign marking, if any or other markings in the gold bars are visible.

20. Though there is a direction by the Writ Court to the effect that the respondent shall co-operate with the appellants in commencing and completing the adjudication proceedings initiated by them, indisputably adjudication proceedings already initiated are over, is subject matter of another writ petition. It is the contention of the appellants that the abovesaid quantity of gold is smuggled.

21. Section 110A of the Customs Act, deals with provisional release of goods, documents and things seized pending adjudication and the said Section is extracted hereunder:

> "Any goods, documents or things seized under section 110, may, pending the order of the adjudicating authority, be released to the owner on taking a bond from him in the proper form with such security and conditions as the adjudicating authority may require."

22. Section 111 of the Customs Act deals with confiscation of improperty imported goods and the said section is extracted hereunder:

> "The following goods brought from a place outside India shall be liable to confiscation: -
>
> (a) any goods imported by sea or air which are unloaded or attempted to be unloaded at any place other than a customs port or customs airport appointed under clause (a) of section 7 for the unloading of such goods;
>
> (b) any goods imported by land or inland water through any route other than a route specified in a notification issued under clause (c) of section 7 for the import of such goods;
>
> (c) any dutiable or prohibited goods brought into any bay, gulf, creek or tidal river for the purpose of being landed at a place other than a customs port;
>
> (d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;
>
> (e) any dutiable or prohibited goods found concealed in any manner in any conveyance;
>
> (f) any dutiable or prohibited goods required to be mentioned under the regulations in an import manifest or import report which are not so mentioned;
>
> (g) any dutiable or prohibited goods which are unloaded from a conveyance in contravention of the provisions of section 32, other than goods inadvertently unloaded but included in the record kept under sub-section (2) of section 45;
>
> (h) any dutiable or prohibited goods unloaded or attempted to be unloaded in contravention of the provisions of section 33 or section 34;
>
> (i) any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof;

(j) any dutiable or prohibited goods removed or attempted to be removed from a customs area or a warehouse without the permission of the proper officer or contrary to the terms of such permission;

(k) any dutiable or prohibited goods imported by land in respect of which the order permitting clearance of the goods required to be produced under section 109 is not produced or which do not correspond in any material particular with the specification contained therein;

(l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;

(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transhipment, with the declaration for transhipment referred to in the proviso to sub-section (1) of section 54;

(n) any dutiable or prohibited goods transited with or without transhipment or attempted to be so transited in contravention of the provisions of Chapter VIII;

(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;

(p) any notified goods in relation to which any provisions of Chapter IVA or of any rule made under this Act for carrying out the purposes of that Chapter have been contravened."

23. Contention of the appellants is that the respondent did not furnish documents to show that there is legal import of the said 15.16 Kgs., of cut pieces of foreign origin gold bars. On the contra, the respondent has contended that the details of the gold carried had been entered in the books of accounts.

24. In the light of the statutory provisions, stated supra and for the reasons that if the subject gold is ultimately sold by the dealer, it would not be possible for verification or production before the competent authority, in the adjudication proceedings and to protect the interests of the revenue, the appellants are directed to release 15.160 kg of Gold Bars to the respondent, which was seized vide Mahazar dated 14th October 2013, subject to the following conditions:-

i) The respondent is directed to offer Bank Guarantee to 50% value of the gold, at the time of seizure, in the name of the the Joint Additional Commissioner of Customs (Airport), New Customs House, Meenambakkam, Chennai-27 and for the remaining value of gold, the respondent is directed to offer immovable property security, by production of documents, within a period of four weeks, from the date of receipt of a copy of this order.

ii) The above condition is imposed, in addition to the directions already contained in the order, made in M.P.No.3 of 2014 in W.P.No.5663 of 2014, dated 04.07.2014.

iii) On fulfilling the above conditions, within a period stated supra, subject gold can be released.

25. In the result, the Writ Appeals are disposed of. No costs. Consequently, connected Miscellaneous Petitions are also closed.

26. After the passing of the order, Mr.N.Murali Kumaran, learned counsel appearing for the respondent submitted that instead of offering immovable property security, the respondent would offer bank guarantee for the entire value of 15.16 Kgs., seized gold bars of foreign origin, valued at Rs.4,53,89,040/-. He further submitted that apart from this condition, the other conditions, already ordered, would be complied with. However, he seeks one week's time for compliance of the conditions, including offering bank guarantee.

27. Both Mr.Velayutham Pichaiya and Mr.T.Chandrasekaran, learned counsel appearing for the respective appellants have no objection for the modification sought for, by the respondent. Submissions of the learned counsel appearing for the parties is placed on record.

28. Thus, by consent of both parties, Clauses (i) to (iii) of Paragraph 19 of this judgment, is modified as hereunder:

i) The respondent is directed to offer Bank Guarantee to 100% value of the gold, at the time of seizure, in the name of the Joint Additional Commissioner of Customs (Airport), New Customs House, Meenambakkam, Chennai-27, within a period of one week, from the date of receipt of a copy of this order.

ii) The above condition is imposed, in addition to the directions already contained in the order, made in M.P.No.3 of 2014 in W.P.No.5663 of 2014, dated 04.07.2014.

iii) On fulfilling the above conditions, within a period of one week thereafter, the appellants are directed to provisionally release the gold.

All other conditions already imposed are sustained.

24. With the above modification, the Writ Appeals are disposed of. No costs. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

skm

TO

1. The Additional Director General,
Directorate General of
Revenue Intelligence,
No.25, Gopalakrishnan Road,
Chennai 600 017.

2. The Senior Intelligence Officer,
Directorate General of
Revenue Intelligence,
No.25, Gopalakrishnan Road,
Chennai 600 017.

3. The Joint Additional Commissioner
of Customs (Airport),
New Customs House,
Meenambakkam, Chennai-27.

+ 1 cc to M/s. T. Chandrasekaran, Advocate SR.29695
+ 1 cc to Mr. Velayutham Pichaiya, Advocate Sr.29921
+ 1 cc to M/s. M.C. Gan Law Firm, Advocate Sr.29601

W.A.Nos.954 and 1056 of 2014
M.P.Nos.1, 1 and 2 of 2014

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