

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.06.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.Nos.18536 to 18538 of 2016

and

W.M.P.Nos.16218 to 16220 of 2016

W.P.No.18536/2016

Mohamed Ansar Abdul Gafoor
52B, Nagavillu Palavi
Puttalam
Colombo
Srilanka

... Petitioner

..Vs..

The Assistant Commissioner of Customs
Air Admin, Ware House,
Air Customs
Airport
Anna International Terminal
Chennai International Airport
Tirusoolam, Chennai.

... Respondent

Prayer:

Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Mandamus directing the respondent to release the goods detained in O.S.No.246 of 2015 Air by implementing and give effect to the Order-in-Appeal Viz., C.Cus-I No.364 of 2015 in C4-I/337/O/2015 Dated 30/06/2015, within a reasonable time frame.

W.P.No.18537/2016

Mohamed Rishad
No.36/1, Hij Ragama
Hemmathagama
Mawanalla
Srilanka

.. Petitioner

..Vs..

The Assistant Commissioner of Customs
Air Admin, Ware House,
Air Customs
Airport
Anna International Terminal
Chennai International Airport
Tirusoolam, Chennai.

.. Respondent

Prayer:

Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Mandamus directing the respondent to release the goods detained in O.S.No.61 of 2015 Air by implementing and give effect to the Order-in-Appeal Viz., C.Cus-I No.390 of 2015 in C4-I/350/O/2015 Dated 30/07/2015, within a reasonable time frame.

W.P.No.18538/2016

Mohamed Rafeek
S/o.Ahamed Mohideen
16, Ash-Shaheed AI Street
Kattankudy
Srilanka

.. Petitioner

..Vs..

The Assistant Commissioner of Customs
Air Admin, Ware House,
Air Customs
Airport
Anna International Terminal
Chennai International Airport
Tirusoolam, Chennai.

.. Respondent

Prayer:

Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Mandamus directing the respondent to release the goods detained in O.S.No.540 of 2015 Air by implementing and give effect to the Order-in-Appeal Viz., C.Cus-I No.723 of 2015 in C4-I/646/O/2015 Dated 30/11/2015, within a reasonable time frame.

For Petitioner in all WPs : Mr.A.Ganesh

For Respondent in all WPs : Mr.V.Sundareswaran, SC

COMMON ORDER

Heard Mr.A.Ganesh, learned counsel appearing for the petitioner, and Mr.V.Sundareswaran, learned standing counsel appearing for the respondent and with their consent, these Writ Petitions are taken up for final disposal.

2. In all these three writ petitions, the petitioners have sought for a direction to release the goods which have been detained pursuant to the order passed on 03.06.2015 by which the concerned adjudicating authority had given an option of redemption to the petitioners for re-export subject to payment of fine and personal penalty. The petitioners preferred appeals to the Appellate Authority and the Appellate Authority after taking into consideration of the facts and circumstances granted a partial relief in the sense that while declining to interfere with the order of redemption for re-export, gave a reprieve to the petitioner by reducing the redemption fine and personal penalty. It appears that the Department has not accepted the order and they have filed revisions, however the proof of filing such revision is not readily placed before the Court.

3. The learned Standing Counsel appearing for the respondent Department submitted that since the Department has filed revisions before the Central Government, the Central Government may be directed to dispose of the revision petition within a time frame and the jewels may not be permitted to be redeemed for reexport. In support of his contention, learned standing counsel relied on the decision of this Court in Aiyakannu Vs. Joint Commissioner of Customs reported in 2012 (281) E.L.T 223 (Mad) and the order in W.P.Nos.22438 and 24230 of 2015 dated 31.08.2015 (Shaik Mohammed Ali Vs. S.Moinuddin) Vs. The Commissioner of Customs (Airport) and Ors. In the instant case, the Commissioner has not permitted the goods to be taken back by the petitioner and retained in the country, but redemption has been permitted only for re-export on payment of redemption fine as well as penalty. This order was passed by the Commissioner of Appeals on 30.06.2015. It is stated that revisions have been preferred before the Government on 16.02.2016/05.03.2016 along with application for interim relief. However, till date no notice has been issued to the petitioner in such revisions nor there is any proof before this Court to show that the revisions have been taken on file.

4. So far as the decision in Aiyakannu's case was concerned, that was a case where the foreign passport holder approached this Court challenging the order passed by the respondents therein and for a direction to release the gold bars. On considering the facts and circumstances of the case, the Court found that the plea raised by the petitioner before

this Court was the plea raised for the first time and the reliance on a notification by the petitioner was unjustified and because the petitioner therein was not a holder of a valid passport under the Passport Act, 1967, the writ petition was dismissed. Therefore, the decision in the case of Aiyakannu is factually distinguishable.

5. So far as the decision in Shaik Mohammed Ali's case is concerned, the Court took into consideration the fact that already the revisional authority had issued notice to the petitioners there in fixing a date for enquiry for hearing under Section 129 (DD) of the Customs Act, 1962. Therefore, the writ petitions were disposed of directing the petitioners therein to appear before the revisional authority and substantiate their case.

6. As pointed out earlier, in the instant case there is no proof to show that the revision petitions have been taken on file and no proof has been produced to show that notice has been ordered to the petitioner. That apart, the order of the Commissioner was passed on 30.06.2015 and the revisions are said to have been presented only on 16.02.2016/05.03.2016. In any event, as on date, the orders which have been passed by the Commissioner (Appeals-I) almost one year back has not been either set aside or modified. Therefore, this Court is of the view that the respondent should comply with the direction subject to certain conditions.

7. In the light of the above, these Writ Petitions are disposed of by directing the respondent to release the Gold Jewellery for the purpose of re-export subject to the petitioner complying with the conditions imposed in the order passed by the Commissioner (Appeals-I) i.e., payment of redemption fine for re-export and personal penalty and also giving an undertaking to comply with the Order in Original, in the event the Department succeeds in the revision. The above directions shall be complied with by the respondent within a period of three weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed. No costs.

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-s/d-

Assistant Registrar (CSIV)

True Copy

Sub-Assistant Registrar

pgp/gpa

To

The Assistant Commissioner of Customs
Air Admin, Ware House,
Air Customs
Airport
Anna International Terminal
Chennai International Airport
Tirusoolam, Chennai.

+3 ccs to Mr.A.Ganesh Advocate sr.30180
+1 cc to Mr.V.sundareswaran Advocate sr.30193

W.P.Nos.18536 to 18538 of 2016
and
W.M.P.Nos.16218 to 16220 of 2016

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