

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2016

CORAM

THE HON'BLE MR. JUSTICE T.S.SIVAGNANAM

WRIT PETITION NO.33448 OF 2015

N.Arroulmojy

... Petitioner

Vs.

1.The Commissioner of Customs,
Airport,
New Customs House,
Meenambakkam,
Chennai 27.

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

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the respondents to release the goods detained in O.S.No.132 of 2014 INT by implementing and give effect to the Order-in-Appeal vide C.Cus.I-No.371/2015 in Appeal No.C4-1/345/0/2915-Air dated 30.06.2015, within a reasonable time frame.

For Petitioner : Mr.A.Ganesh

For Respondents : Mr.K.Mohana Murali
Standing Counsel (customs)

ORDER

Heard Mr.A.Ganesh, learned counsel appearing for the petitioner and Mr.K.Mohana Murali, learned Standing Counsel appearing for the respondents. With the consent of the learned counsel appearing on either side, the writ petition is taken up for final disposal.

2. This writ petition has been filed praying for issuance of a Writ of Mandamus, implement the order passed by the first respondent viz., the Commissioner of Customs, reversing and modifying the order passed by the second

respondent. Admittedly, till date, the order passed by the Appellate Authority has not been stayed or modified or varied. Therefore, the Department is under the obligation to implement the order by giving effect to the said order. In this regard, the petitioner had requested the Department to implement the order by representation dated 07.09.2015. Since the same has not been done, the petitioner is before this Court.

3. Only defence taken by the second respondent in the counter affidavit is that as against the order passed by the first respondent dated 30.06.2015, review petition has been filed under Section 129DD of the Customs Act, 1962 before the Revisional Authority.

4. The learned counsel appearing for the petitioner contended that the Division Bench of the Punjab and Haryana at Chandigarh High Court, in the case of NVR FORGINGS VS. UNION OF INDIA [2016 (335) E.L.T. 679 (P&H)], while considering the jurisdictional and Revisional Authority, over and above the orders passed by the Commissioner(Appeals), held that both the authorities hold the same order and the revisionary authority cannot sit in judgment over the order passed by the Commissioner of Customs (Appeals).

5. Be that as it may, the order passed by the Commissioner (Appeal-I) is dated 30.06.2015 and one year has lapsed and till date, the Department has not pursued the Revision Petition nor obtained any interim orders. Therefore, with a view to grant one more opportunity to the Department, they are granted four weeks time, from the date of receipt of a copy of this order, to obtain appropriate interim order (or) final order, from the Revisional Authority, failing which, on the expiry of 30th day, so computed as per the above direction, the order passed by the Commissioner (Appeals-I) dated 30.06.2015, shall be implemented.

6. It appears that after the order was passed by the Commissioner (Appeals-I), the petitioner had a re-thinking in the matter and he has requested the Commissioner (Appeals-I) to grant him permission to re-export ***gold coins**. In the event, the Department is unable to obtain any orders from the Revisional Authority, within the time permitted, this request for re-export should be considered.

*** In addition to the above, the petitioner is directed to furnish a bond for the full value and secure the interest of revenue. In the event, the revenue succeeds in the revision petition filed before the Central Government, the bond can be enforced.**

7. The time for compliance of the orders extended by fifteen days from the date of receipt of a copy of this order.

The writ petition is disposed of on the above terms. No costs.

Sd/-
Assistant Registrar(J)
Dated : 16.08.2016

***Corrected as per the order of
this court dated 21.09.2016 made
in W.P.NO.33448 of 2015 by TSSJ
Sd/- Assistant Registrar(CS IV)
Dated : 23.09.2016**

/true copy/

Sub Assistant Registrar

rpa/ari

To

1. The Commissioner of Customs,
Airport, New Customs House,
Meenambakkam,
Chennai 27.
2. The Assistant Commissioner of Customs,
Air Admin. Airport,
Anna International Terminal,
Chennai International Airport,
Tirusoolam, Chennai.

To be substituted to
the order already

despatched on
29.08.2016

+ 1 cc to Mr.K.Mohana Murali, Advocate Sr 53689

+ 1 cc to Mr.A.Ganesh, Advocate Sr 53992

W.P.NO.33448 OF 2015

ALA(CO)
KR/17/8/16

TRM(CO)
CA(23.09.2016)

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