IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2016

C O R A M

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

W.P.No.24967 of 2016
&
WMP No.21336 of 2016

Shri Shihabudeen Mannambath ... Petitioner

Vs

1. The Principal Commissioner of Customs (I)
New Customs House
GST Road, Meenambakkam
Chennai-600 027.

2. The Additional Commissioner of Customs (Airport)
Anna International Airport
New Customs House GST Road
Meenambakkam, Chennai-600 027. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the respondents herein to cause implementation of the order of the Commissioner of Customs (Appeal-I) in Order- in- Appeal C.Cus-I No. 352 & 353/ 2015 dated 30.05.2015 by releasing 410 grams of gold jewellery valued at Rs.8,13,844/- for re-export on payment of redemption fine of Rs.1,50,000/- and personal penalty of Rs.75,000/- and such other conditions which may be imposed by this Honourable Court.

For petitioner : Mr.B.Satish Sundar

For respondents : Mrs.R.Hemalatha
Standing Counsel

O R D E R

Heard Mr.B.Satish Sundar, learned counsel for the petitioner and Mrs.R.Hemalatha, learned Standing Counsel for the respondents and with their consent, the writ petition is taken up for final disposal.

2.In this writ petition, the petitioner seeks for issuance of a writ of mandamus to direct the respondents to implement the order passed by the first respondent dated 30.06.2015.

3.The petitioner, holder of Indian Passport, arrived at Anna International Terminal of Chennai Airport from Dubai, he had brought 410 gms of assorted gold jewellery and failed to declare the same to the Customs. Hence, a show cause notice dated 30.01.2014, was issued, calling upon the petitioner to show cause as to why the seized three gold bars totally weighing 410 gms of gold jewellary should not be confiscated under the Customs Act, 1962 read with Foreign Trade (Development and Regulation) Act, 1992 and as to why penalty should not be imposed on him and asked him to give explanation accompanied with all evidence, documentary or otherwise within fifteen days from the date of receipt of the notice, which ultimately resulted in an order of confiscation with option of redemption, subject to conditions.

4.Aggrieved over the said order, the petitioner as well as the Revenue preferred appeals to the first respondent and the Commissioner of Customs (Appeals), who by an order dated 30.06.2015, reduced the redemption for re-export from Rs.2,50,000/- to Rs.1,50,000/- on the appeal filed by the petitioner and ordered that the personal penalty imposed was commensurate to the offence committed, however, rejected the appeal preferred by the Revenue.

5.The learned counsel for the petitioner submitted that the respondent Department filed a Revision dated 04.11.2015 as against the orders of the Commissioner of Customs (Appeals-I) and consequently, a show cause notice dated 29.01.2016, has been issued to the petitioner as to why the order-in-original should not be annulled. The learned counsel further submits that the said Revision Application is not maintainable and the Department has not obtained any stay in the Revision Application and hence prayed for release of gold bars. Since the petitioner was not favoured with any order, he is before this Court by way of this writ petition.

6.The learned counsel for the respondents, on instructions, submitted that as against the order passed by the Commissioner (Appeals), the Department has filed a revision petition before the Joint Secretary (Revision Application), Ministry of Finance, Department of Revenue, New Delhi.

7.Be that as it may, admittedly, as on date there is no order of stay granted by the Revisional Authority. Therefore, the second respondent is bound to implement the order passed by the first respondent. However, this Court is inclined to grant some time to the Department to move an application for stay before the Revisional Authority, if they so desire.

8.Accordingly, the second respondent/Customs Department is granted 45 days time from the date of receipt of a copy of this order to move a stay application before the Revisional Authority and if they fail to secure any stay or appropriate interim orders, on the expiry of the 45th day, the respondents shall release the gold subject to the petitioner paying the redemption fine of Rs.1,50,000/- and such release shall be only for re-export and not for clearance. The petitioner shall also file a bond securing the interest of Revenue, in the event they succeed before the Revisional Authority.

The Writ Petition is allowed on the above terms. No costs. Consequently, connected miscellaneous petitioner is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

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GST Road, Meenambakkam
Chennai-600 027.

2. The Additional Commissioner of Customs (Airport)
Anna International Airport
New Customs House GST Road
Meenambakkam, Chennai-600 027.

+1cc to Mr.R.Hemalatha, Advocate, S.R.No.51962
+1cc to Mr.B.Sathish Sundar, Advocate, S.R.No.51672

W.P.No.24967 of 2016

NR(CO)
CA(05/10/2016)