

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.Nos.26496 to 26498 of 2016

and

W.M.P.Nos.22708 to 22710 of 2016

W.P.No.26496 of 2016

Shri Munivelu Bharathi, .. Petitioner

Vs

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

2.Joint Commissioner of Customs (Airport),
Anna International Airport,
New Customs House, GST Road,
Meenambakkam, Chennai - 27.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue 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.867 & 866/2015 dated 23.12.2015 by releasing gold biscuits in question Rs.4,72,500/- on payment of redemption fine of Rs.1,00,000/- and personal penalty of Rs.20,000/-.

W.P.No.26497 of 2016

Shri Iqbal Adukkathil

.. Petitioner

Vs

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

2.Joint Commissioner of Customs (Airport),
Anna International Airport,
New Customs House, GST Road,
Meenambakkam, Chennai - 27.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue 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.617/2015 dated 30.09.2015 by releasing gold bars in question Rs.11,64,175/- on payment of redemption fine of Rs.4,50,000/- and personal penalty of Rs.1,00,000/-.

W.P.No.26498 of 2016

Mrs.Meghraj Gani

.. Petitioner

Vs

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

2.Joint Commissioner of Customs (Airport),
Anna International Airport,
New Customs House, GST Road,
Meenambakkam, Chennai - 27.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue 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.872/2015 dated 23.12.2015 by releasing two numbers of gold chains in question Rs.2,49,637/- on payment of redemption fine of Rs.75,000/- and personal penalty of Rs.25,000/-.

For Petitioner
in all W.Ps. : Mr.S.Krishnanandh

For Respondents
in all W.Ps. : Mr.B.Rabu Manohar
Senior Panel Counsel

COMMON ORDER

Heard Mr.S.Krishnanandh, learned counsel for the petitioners and Mr.B.Rabu Manohar, learned Senior Panel Counsel appearing for the respondents. With the consent of either side, the writ petitions are taken up for disposal.

2.In these writ petitions, the petitioners seeks for implementation of the order passed by the Commissioner (Appeal-I) dated 30.09.2015 and 23.12.2015 respectively. The

petitioners in W.P.Nos.26496 and 26497 of 2016 are holders of Indian Passport but they are Non-resident Indian. The petitioner in W.P.No.26498 of 2016 is an Indian Passport holder. All the three petitioners had smuggled gold bars/jewellery. They were detained in the Airport and ultimately, the adjudicating authority passed an order in original dated 06.06.2015, 30.04.2015 and 16.10.2015 respectively. The orders permitted the petitioner to re-export the gold bars/jewellery on payment of redemption fine and penalty. Challenging the same, the petitioners filed appeals before the Commissioner (Appeal-I). The revenue also filed appeals before the Commissioner (Appeal-I) which were rejected and the petitioners' appeals were partly allowed and there was a marginal reduction in the redemption fine and penalty imposed by the adjudicating authority. These orders were passed during September/December 2015. However, the same have not been implemented till date and the petitioner has not been able to re-export the gold bars/jewellery. The representation given by the petitioners were not taken note of and no effective orders were passed by the respondent and therefore, the petitioner is before this Court by way of these writ petitions.

3.The respondents in the counter affidavit have made elaborate reference to the factual details. However, those details cannot be gone into in these writ petitions as the Department were unable to succeed before the Commissioner (Appeal-I). The only issue to be seen is as to whether a direction should be issued to the respondent to release the gold bars/jewellery within a time frame. The only defence raised by the respondent is that the petitioner have filed revision before the Central Government against the orders passed by the Commissioner (Appeals). Though such revisions are pending before the revisional authority/Central Government, the Hon'ble Division Bench of High Court of Punjab and Haryana in the case of NVR Forgings vs. Union of India reported in 2016 (335) E.L.T. 679 (P&H) held that the revision by the Central Government entrusted to a Joint Secretary level officer equal to Commissioner is not empowered to pass revisional order against the order passed by the Officer of same rank and therefore the order passed by the revisional authority which was challenged in a writ petition was set aside. The operative portion of the order reads as follows:

"8.In the present case, the impugned order was passed by the Joint Secretary to Government of India who was also Commissioner of Central Excise and Customs. Thus, the order-in-appeal as well as revisionary order had been passed by the officers of the same rank which is not permissible as per law. Adverting to the judgments relied upon by the learned counsel for the respondents, it may be noticed that the said decisions were based on

individual fact situation involved therein. Thus, the respondents cannot derive any advantage from the said pronouncements."

4.The Special Leave Petition filed as against the above order by the Central Government in SLP(Civil) CC 19063 of 2016 was dismissed by the Hon'ble Supreme Court on 17.10.2016. The Central Government has filed a review petition as against the said order and the same has been dismissed on 07.11.2016. Therefore, as on date, the revisional authority would not have jurisdiction to proceed with the revision as the Joint Secretary of the Central Government is the officer equivalent in cadre to that of the Commissioner who passed an order in appeal, which is sought to be implemented by way of these writ petitions.

4.The learned senior panel counsel appearing for the respondent has produced a communication from the Central Board of Excise and Customs dated 16.11.2016 from which it is seen that the above legal position has been accepted by the Department and they are taking remedial measures. Taking into consideration of the fact that orders have been passed by the Commissioner (Appeals) during September/December 2015, the gold bars/jewellery cannot be endlessly be retained by the Department, more so, when the petitioner has consented before the adjudicating authority as well as the appellate authority who have granted the relief of re-export subject to payment of redemption fine and penalty. In the event there is a re-organization done by the Central Government and the defect pointed out in the case of NVR Forgings (supra) is a remedy, then the revisional authority would be entitled to hear the revision petition. Thus, while issuing appropriate direction, the interest of revenue also has to be protected.

5.Accordingly, the writ petitions are disposed of by directing the respondent to release the gold bars/jewellery to the petitioner within a period of one week from the date on which the petitioner pays redemption fine and penalty and also furnish a bond securing the interest of the Department that in the event of their success before the revisional authority, they will be able to proceed against the petitioner in terms of the provisions of the Customs Act and Rules framed there. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

To

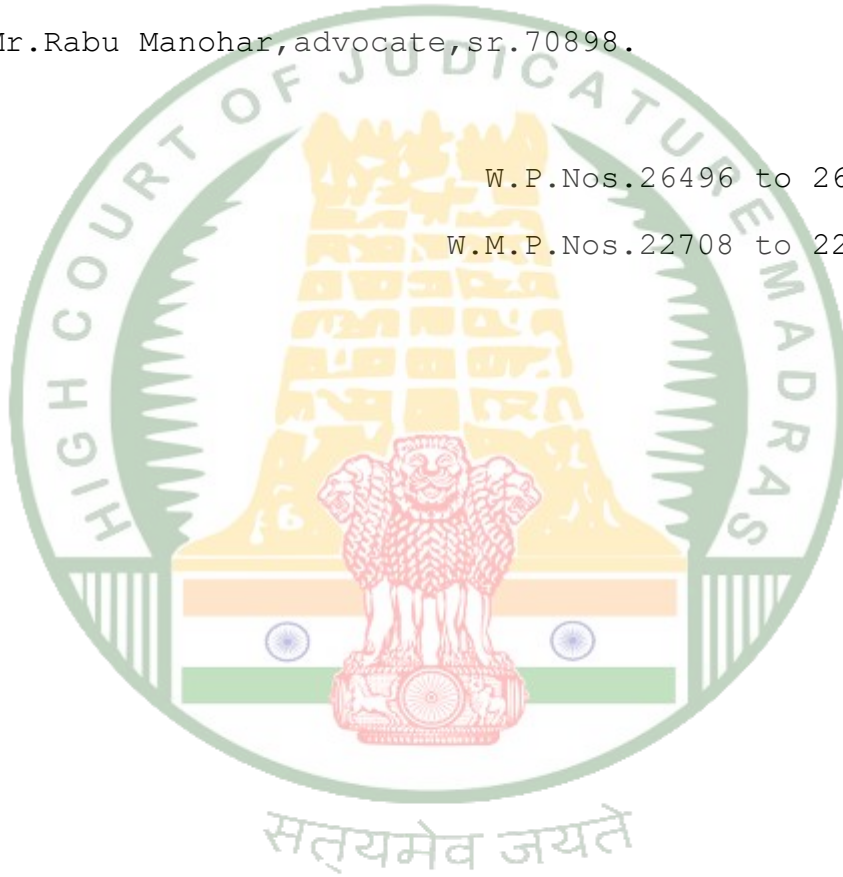
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+1 cc to Mr.Rabu Manohar,advocate,sr.70898.

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