

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.26499 of 2016
and W.M.P.No.22711 of 2016

V.Senthil Kumar

.. Petitioner

Vs

1.The Chief Commissioner of Customs,
Customs House, No.60, Rajaji Salai,
Chennai - 600 001.

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

3.Additional 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 release of the gold jewellery totally weighing 692 gms, seized from the petitioner in terms of the in Order-in-Appeal C.Cus-I No.206/2016 dated 31.03.2016 passed by the Commissioner of Customs (Appeals-I), Chennai.

For Petitioner : Mr.S.Krishnanandh

For Respondents: Mr.B.Rabu Manohar

Senior Panel Counsel

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.The petitioner was travelling from Trichy to Chennai. He was a permanent resident of Cuddalore. The petitioner was detained at the Chennai Airport. The allegation against the

petitioner was that he was carrying certain gold jewellery which was handed over to him by an international passenger at the Trichy International Airport. The petitioner submitted that he is a domestic passenger and the story which was built is absolutely false. The adjudicating authority considered the entire matter and by order dated 11.09.2015 rejected the stand of the Department and directed dropping of the proceedings and release the gold jewellery seized from the petitioner. Even though the revenue preferred an appeal before the Commissioner (Appeals-I), by order dated 31.03.2016, the same has been dismissed. The petitioner approached this Court and filed a writ petition in W.P.No.18913 of 2016 seeking for implementation of the order passed by the Commissioner (Appeals-I). This Court directed that the petitioner's representation dated 24.05.2016 should be considered. The respondent considered the representation and passed an order dated 16.07.2016, wherein it is stated that as against the order passed by the Commissioner (Appeals), they preferred a revision before the Joint Secretary, New Delhi. Admittedly, the revision application has not been disposed of till date.

3. In the meantime, the respondents have sent a communication to the petitioner dated 09.11.2016 proposing to sell the gold jewellery if the petitioner does not obtain any stay of the order-in-original or order-in-appeal. Unfortunately, the Assistant Commissioner of Customs (Disposal-Air) has not applied his mind while passing the order dated 09.11.2016. The Assistant Commissioner has failed to note that the petitioner succeeded before the revisional authority and the entire proceedings were directed to be dropped and the gold jewellery was directed to be released without fine and penalty. It is the Department which filed an appeal and miserably failed before the appellate authority and therefore the question of petitioner obtaining an order of stay does not arise. Thus, the proceedings of the Assistant Commissioner of Customs (Disposal Air) dated 09.11.2016 is liable to be set aside. Accordingly, it is set aside.

4. In the light of the above, the writ petition is allowed and the respondents are directed to release the gold jewellery to the petitioner within a period of three days from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

To

1.The Chief Commissioner of Customs,
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Chennai - 600 001.

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Chennai - 600 027.

3.Additional Commissioner of Customs (Airport),
Anna International Airport,
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+1 cc to Mr.Rabu Manohar,advocate,sr.70896.

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and
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