IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.28382 of 2016 &
W.M.P.No.24500 of 2016

Shik Mastani Bi,
No.63/21, Gandhi Bazar,
Rayachoty, Kadappa,
Andhrapradesh,
Rep. by her Power of Attorney,
Syed Arif Hussain,
19/501, House Street,
Kadapa-516 001,
Andhra Pradesh. .. Petitioner

Vs

1.The Principal Commissioner of Customs,
Chennai-1 (Airport),
O/o.The Principal Commissioner of Customs Commissionerate,
New Customs House,
Meenambakkam, Chennai-600 027.

2.The Assistant Commissioner of Customs, (Airport),
Anna International Airport,
Meenambakkam, Chennai-600 027. .. Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Mandamus, to direct the respondents to implement the order passed by the Commissioner (Appeals), Chennai in Order-in-Appeal No.C4.-I/332/O/2015-Air, dated 24.06.2015 in F.No.C4-I/315/o/2015-Air.

For Petitioner : Mr.T.Chezhiyan
For Respondents : Mr.T.R.Senthilkumar
Senior Panel Counsel

O R D E R

Heard Mr.T.Chezhiyan, learned counsel appearing for the petitioner and Mr.T.R.Senthilkumar, learned Senior Panel counsel, appearing for the respondents.

2. In this Writ Petition, the petitioner seeks for implementation of the order passed by the Commissioner of Customs (Appeals-I) in Appeal No.332 of 2015, dated 24.06.2015.

3. The admitted facts are that the petitioner was a passenger, who arrived at the Chennai International Airport, from Kuwait, did not declare the gold, she was carrying in the Indian Customs Declaration Form. On check being done, it was found that she had concealed the gold in her baggage and which was seized, proceedings were initiated and the Adjudicating Officer, vide order dated 18.04.2015 adjudicated the case and order confiscating the gold bars, jewellery etc., with the option for redemption for re-export on payment of fine of Rs.17,25,000/- in terms of Section 125 of the Customs Act, 1962 and imposed personal penalty of Rs.3,25,000/- on the petitioner.

4. The petitioner preferred an Appeal to the Commissioner of Customs (Appeals-I) and the Commissioner of Customs (Appeals-I), by an order dated 24.06.2015, while confirming the order passed by the Adjudicating Officer, permitting redemption of seized articles for re-export, reduced the redemption fine from Rs.17,25,000/- to Rs.7,00,000/- and the penalty from Rs.3,25,000/- to Rs.1,50,000/-. The petitioner seeks for implementation of the order, since in spite of several representations, it has not been implemented and more than one year had passed.

5. While the situation remain thus, the Department filed an Appeal as against the order passed by Adjudicating Officer and the same was heard out of turn by the Commissioner of Appeals and an order was passed on 06.08.2015, rejecting the Appeal. The submission of the Revenue is that as against both the orders passed by the Commissioner of Customs (Appeals), Revisions have been filed before the Central Government and notice has been issued to the petitioner, dated 10.08.2015, that too, only in one of the Revisions filed by the Revenue. However, as on date, no interim order has been granted by the Revisional Authority, nor any date has been fixed by the Revisional Authority.

6. The Revenue's contention is that in the event they succeeding in Revision and the Revisional Authority orders for confiscation, any direction issued by this Court to implement the order in Appeal would cause prejudice to the Revenue. This argument is far fetch since as on date there are three orders which are against the Department, one by the Adjudicating Officer and two orders by the Commissioner of Customs (Appeals)

7. That apart, the Department appears to have not been diligent in following up the matter by promptly filing the Revision Petition. One more contention raised by the learned counsel for the petitioner is that the Revisional Authority does not have jurisdiction as he is an Officer, who is at par with the Commissioner of Customs (Appeals) and in this regard, has placed reliance on the decision of the Punjab and Haryana High Court in the case of NVR Forgings Vs. Union of India, reported in 2016 (335) ELT 679. Though the Revenue states that steps have been taken to file an Appeal to the Hon'ble Supreme Court, against this decision, number of such Appeal and other details have not been furnished. Thus, as on date, the decision of the Punjab and Haryana High Court holds the field and if applied it has to be held that the Revisional Authority has no jurisdiction to consider the Revision Petition. Be that as it may, the endeavour of the petitioner is to re-export the seized articles after due compliance of the conditions imposed by the Commissioner of Customs (Appeals).

8. Considering the facts and circumstances of the case and taking note of the fact that the Department has implemented several orders passed by this Court directing the release of gold jewellery and gold, the following order will meet the ends of justice.

9. The petitioner is directed to remit the entire amount as ordered to be paid as redemption fine in the order in Appeal, dated 24.06.2015 as well as the personal penalty and furnish bank guarantee for a sum of Rs.3,50,000/- and the remaining amount to be secured by a personal bond by the petitioner and her husband supported with full details, authenticated records, especially, proof of residence etc. and such bond shall be for the differential amount of redemption fine as well as the differential amount of the personal penalty within three weeks from the date of receipt of this order. On compliance of the above direction, the Department is granted 30 days time to release the seized goods for re-exportation. Within this 30 days which shall be computed from the date of furnishing bank guarantee and bond, it is open to the Department to secure orders from the Revisional Authority.

10. With the above observations, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

To
1.The Principal Commissioner of Customs,
Chennai-1 (Airport),
O/o.The Principal Commissioner of Customs Commissionerate,
New Customs House,
Meenambakkam, Chennai-600 027.

2.The Assistant Commissioner of Customs, (Airport),
Anna International Airport,
Meenambakkam, Chennai-600 027.

+1cc to Mr.T.R.Senthilkumar,Advocate, S.R.No.56406
+1cc to Mr.T.Chezhiyan Advocate, S.R.No.56429

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CO(RD)
CP 21/10/216