

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.11.2016

Coram

The Hon'ble Mr. Justice T.S. Sivagnanam

Writ Petition No. 29171 of 2016 and

W.M.P.No.25225 of 2016

Shaik Abdul Munaf

...Petitioner

Vs

1. The Principal Commissioner of Customs,
Chennai -I Airport.
O/o. The Principal Commissioner of Customs,
Commissionrate,
New Customs House, Meenambakkam,
Chennai - 600 027.
2. The Assistant Commissioner of Customs (Airport)
Anna International Airport,
Meenambakkam, Chennai - 600 027.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Mandamus, directing the respondents to implement the order passed by the Commissioner (Appeals) Chennai, in Order-in-Appeal No.C.Cus-I No.566/2015, dated 14.09.2015, in F.No.C4-1/452/O/2015-AIR.

For Petitioner : Mr. T. Chezhiyan

For Respondent : Mr. G.M. Syed Nurullah Sheriff
Senior Panel Counsel

ORDER

Heard Mr. T. Chezhiyan, learned counsel appearing for the petitioner and Mr. G.M. Syed Nurullah Sheriff, learned Senior Panel Counsel for Revenue/Respondent.

2. In this Writ Petition, the petitioner seeks for a direction upon the respondents to implement the order passed by the Commissioner of Customs (Appeals - I), Chennai, in Order-in-Appeal C.Cus-I No.566/2015, dated 14.09.2015. The said Appeal

was filed by the petitioner against the order of adjudication passed by the Joint Commissioner of Customs (Adjudication-AIR) in Order-in-Original, dated 24.06.2015, by which, the Joint Commissioner ordered for confiscation of the gold bars carried by the petitioner, and gave an option to redeem the same on payment of fine of Rs.25,25,000/- for re-export in terms of Section 125 of the Customs Act, 1962 (hereinafter, referred to as 'the Act'). The Commissioner of Customs (Appeals-I), by order, dated 14.09.2015, disposed of the Appeal and modified the order passed by the Joint Commissioner, by reducing the redemption fine for re-export to Rs.10,00,000/- and imposing personal penalty of Rs.2,00,000/-. The petitioner sought for implementation of the order passed by the Commissioner of Customs (Appeals-I) dated 14.09.2015, by making a representation, dated 20.10.2015.

3. In the meantime, the Revenue also filed Appeal before the Commissioner of Customs (Appeals-I) against the order of adjudication passed by the Joint Commissioner of Customs, dated 24.06.2015, which was dismissed as infructuous by order, dated 30.11.2015. It appears that the Revenue Department/Respondent has filed Revision Application against the order passed by the Commissioner of Customs (Appeals-I), dated 30.11.2015, before the Joint Secretary, Central Government of India under Section 129 DD of the Act. This Review Application was taken on file and numbered as Revision Application No.15 of 2016. Though the Revision Application has been pending since 5th May, 2016, till date, no orders have been passed.

4. The learned Senior Panel Counsel appearing for the respondents made elaborate submissions on the factual grounds and raised legal contentions as well. In this regard, reference was made to the counter affidavit filed by the respondents, in para Nos.18 and 20. The averments made in para Nos.18 and 20 of the counter affidavit, are in fact, the grounds, which have been raised by the first respondent/Department before the Commissioner of Customs (Appeals-I), when they challenged the order of adjudication, dated 24.06.2015.

5. As noticed above, the Appeal filed by the Department has been dismissed, by order, dated 30.11.2015. Therefore, this Court cannot adjudicate the correctness of the said order in this Writ Petition, when the petitioner seeks for implementation of the order passed in Order-in-Appeal, dated 14.09.2015. Thus, on the peculiar facts and circumstances of the case, this Court has no other option, except, to direct the respondents to comply with the order passed by the Commissioner of Customs (Appeals-I), dated 14.09.2015. However, the interest of the

Revenue should also to be safeguarded and this Court is of the view that the following order will meet the ends of justice.

6. Accordingly, the Writ Petition stands disposed of, by directing the respondents to comply with the order passed by the Commissioner of Customs (Appeals-), dated 14.09.2015 and, on the petitioner remitting the redemption fine and also personal penalty, the goods shall forthwith be released. The petitioner shall furnish a bond for the differential value of the goods, viz., the value, as determined by the Adjudicating Authority, in Order-in-Original, dated 24.06.2015, and the value as fixed by the Commissioner of Customs (Appeals-I), in Order-in-Appeal, dated 14.09.2015. In the event, the Respondent/Revenue Department succeeds in the Revision Application before the Central Government, they will be entitled to invoke the bond for recovery of the money. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1. The Principal Commissioner of Customs,
Chennai -I (Airport.)
O/o. The Principal Commissioner of Customs,
Commissionrate,
New Customs House, Meenambakkam,
Chennai - 600 027.
2. The Assistant Commissioner of Customs (Airport)
Anna International Airport,
Meenambakkam,
Chennai-600 27.

+1cc to Mr.T.Chezhiyan, Advocate Sr.63415

+1cc to Mr.G.M.Syed Nurullah Sherif, Advocate Sr.62510

Writ Petition No.29171 of 2016

ss[co]
srg 01/12/2016