

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2016

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THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.P.No.32340 of 2016
and
WMP.No.28052 of 2016

Shri Mohammed Omar Shaik

... Petitioner

Vs.

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

Writ Petition is filed under Article 226 of the Constitution of India to India for the issuance of a Writ of Mandamus, directing the respondents to implement the order passed by the Commissioner (Appeals) Chennai, Order in Appeal No.C.Cus-I No.727/2015 - dated 30.11.2015 in C.4-I/672/O/2015-Air Dated 30.11.2015-Air.

For Petitioner : Mr.T.Chezhiyan

For Respondents : Mrs.R.Hemalatha,
Senior Panel Counsel

O R D E R

Heard Mr.T.Chezhiyan, the learned Counsel for the petitioner and Mrs.R.Hemalatha, the learned Senior Panel Counsel appearing for the respondents.

2. The petitioner seeks for implementation of the order passed by the Commissioner (Appeals) Chennai, Order in Appeal No.C.Cus-I No.727/2015 - dated 30.11.2015 in C.4-I/672/O/2015-Air Dated 30.11.2015-Air.

3. The said appeal was filed by the petitioner, challenging the order in original passed by the 2nd respondent dated 11.09.2015 in and by which the 2nd respondent ordered absolute confiscation of two numbers of Tola Gold Bars totally

weighing 233 gms. and imposed penalty of Rs.60,000/-. In the appeal before the Commissioner of Customs (Appeals-I), the order of confiscation was set aside with an option of redemption of the same for home consumption on payment of redemption fine of Rs.1,80,000/-. The order imposing penalty of Rs.60,000/- was not interfered with by the Commissioner of Customs (Appeals-I). Therefore, the petitioner seeks for implementation.

4. The respondents in their counter affidavit have elaborately set out the factual scenario which has culminated in the order passed by the Commissioner of Customs (Appeals-I) and would submit that the department has filed a Revision Petition before the Central Government and as of now, the gold cannot be released.

5. The learned Counsel for the petitioner would submit that the revisional authority is an officer equivalent in rank with that of the Commissioner (Appeals) and he is not empowered to deal with the same and any order passed by the said authority will be wholly without jurisdiction. In this regard, reliance has been placed on a decision of a Division Bench of Punjab and Haryana High Court in NVR Forgings vs. Union of India reported in 2016 (335) ELT 679 which judgment has been confirmed by the Hon'ble Supreme Court as the Special Leave Petition filed by the Government has been dismissed by the Hon'ble Supreme Court.

6. Thus, considering the over all circumstances and taking note of the fact that the articles which were confiscated are gold bars, the following orders would meet the ends of justice.

1. The respondents are granted 30 days from the date of receipt of a copy of this Order to move the Revisional Authority for either interim or final order as against the order of the Commissioner of Customs (Appeals).

2. If within this time frame, if they are unable to get any orders, then, the goods-in-question, namely, 2 Nos. of Gold Bars, shall be released to the petitioner subject to the following conditions:

(a) The petitioner shall pay the redemption fine of Rs.1,80,000/- (Rupees One Lakh Eighty Thousand Only), the penalty of Rs.60,000/- (Rupees Sixty Thousand Only) and the duty of the goods that may be determined by the respondents;

(b) Apart from that, the petitioner shall furnish a bank guarantee for a sum of Rs.75,000/- and keep the bank guarantee alive till the disposal of the revision petition by the Revisional Authority (Central Government); and

(c) It is made clear that this direction is issued subject to the outcome of the revision petition filed by the Government.

7. The Writ Petition is disposed of accordingly. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

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To

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

+1cc to Ms.R.Hemalatha, Senior Standing Counsel for Customs
& Central Excise, S.R.No.70812

W.P.No.32340 of 2016

GJ(CO)
CA(29/12/2016)

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