IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :22.11.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.Nos.33437 to 33439 of 2016

Kamaruddin .. Petitioner in W.P.No.33437 of 2016

Siti Noarazarul Yanie Binti Mat .. Petitioner in W.P.No.33438 of 2016

Masitah Binti Ahmad Tallah ..Petitioner in W.P.No.33439 of 2016

..Vs..

1.Principal Commissioner of Customs (I),
New Customs House, G.S.T.Road,
Meenambakkam, Chennai 600 027.

2.Joint Commissioner of Customs (Airport)
Anna International Airport
New Customs House, G.S.T.Road,
Meenambakkam, Chennai 600 027.

3.Assistant Commissioner of Customs
(Preventive - Refunds),
Airport Administration
New Customs House, G.S.T.Road,
Meenambakkam, Chennai 600 027.

.. Respondents in all W.Ps

Common Prayer:

Writ Petitions filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus to direct the respondents more particularly the 3rd respondent to cause refund of Rs.11,50,000/-; Rs.1,00,000/- and Rs.50,000/-, with interest pursuant to the order of the Commissioner of Customs (Appeal-I) in Order-in-Appeal C.Cus. - I No.661/2015, 660/2015 and 659/2015 dated 10.10.2015, with interest at appropriate rates.

For Petitioner : Mr.B.Sathish Sundar
(in all W.Ps.)
For Respondents: Mr.S.Rabu Manohar
(in all W.Ps.) Senior Panel Counsel

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C O M M O N O R D E R

Heard Mr.B.Sathish Sundar, learned counsel for the petitioner and Mr.S.Rabu Manohar, learned Senior Panel Counsel accepting notice on behalf of the respondents. With the consent of the learned counsel appearing on either side, the Writ Petitions are taken up for final disposal.

2.The petitioners have come forward with these Writ Petitions for directing the third respondent to cause refund of fine and penalty paid by the petitioners pursuant to the Order in Original dated 30.04.2015 in Order-In-Original No.59 of 2015. In the said order, the adjudicating authority viz. the Joint Commissioner of Customs (Adjudication-AIR), has ordered as hereunder:

> ORDER
>
> (i) I order for confiscation of two gold bars totally weighing 2000 grams and totally valued at Rs.51,35,740/- under section 111(d) & (1) of the Customs Act, 1962 read with Foreign Trade (Development and Regulation) Act, 1992. However, I give them an option to redeem the same for re-export, on payment of fine of Rs.25,00,000/- under section-125 of the C.A.1962 which is to be exercised within a period of one month from the date of the order.
>
> (ii) I order for confiscation of material objects dark blue colour jeans pant "Levis Demi Curve" with specially stitched inner pocket and light blue colour "Levis Demi Curve" with specially stitched inner packet which was used to conceal the gold bars and the white paper and news paper which were used to conceal the said gold bars under Section 119 of the Customs Act, 1962. However, order to redeem the same on payment of fine of Rs.1,000/- in terms of section-125 of the Customs Act, 1962.
>
> (iii) I impose a penalty Rs.2,00,000/- (Rupees Two Lakhs only) on Smt.Sita Noarazarul Yanie Binti, Rs.1,50,000/- (Rupees One Lakh Fifty Thousand only) on Smt. Masitah Binti Ahmad Tallhah and Rs.3,00,000/- (Rupees Three Lakhs only) on Shri Kamaruddin Bin Mohamed Ismail under section 112 of the Customs Act, 1962."

3.The petitioners in order to avail the benefit of re-export, as granted in the above order, have paid the fine and penalty on 29.07.2015, pursuant to which the re-export of the gold bars were allowed. Parallelly, the petitioners have preferred Appeals to the Commissioner of Customs (Appeals), challenging the Order-In-Original dated 30.04.2015. The Commissioner of Customs (Appeals), by an order dated 10.10.2015, was of the view that the redemption fine ordered by the Adjudicating Authority is disproportionate to the margin of profit and accordingly reduced the fine amount from Rs.25,00,000/- to Rs.15,00,000/- and the penalty imposed on the petitioners were reduced to Rs.1,50,000/-, Rs.1,00,000 & Rs.1,00,000/-, respectively.

4.After the order was passed by the Commissioner of Customs (Appeals), the petitioners submitted their Applications dated 10.03.2016, for refund of the excess amount of fine and penalty paid by them. In response to the said Applications, the third respondent by communication dated 18.03.2016, directed the petitioners to forward their respective copy of the Passport duly self attested, for necessary verification. Thus, the petitioners were under the earnest belief that their Applications for refund are being processed. However, nothing happened for several months and therefore the petitioners are before this Court.

5.In the interregnum, the petitioners have been served with Notices from the Revisional Authority viz. Under Secretary to Government of India, Ministry of Finance, Department of Revenue, New Delhi, stating that the Commissioner of Customs, Chennai, has preferred Revision Petitions as against the orders passed by the Commissioner of Customs (Appeals-1) and the said Notices were dated 30.07.2016.

6.As on date, the Revision Petitions have not been taken up for disposal and it is not clear, within what time, the Revision Petitions would be heard and disposed of.

7.In the counter affidavits filed by the respondents, all the averments pertain to the merits of the matter, which obviously the Department cannot now canvass, in view of the fact that as on date the order passed by the Commissioner of Customs (Appeals) dated 10.10.2011, holds the field. In fact there is no averment as to what is the fate of the Revision Applications and the counter affidavits proceed solely on the basis of the factual positions, which cannot be canvassed in these Writ Petitions. Therefore, the counter affidavits are of little assistance to the Court.

8.Taking into consideration the fact that no time limit is fixed for disposal of the Revision Applications filed by the Central Government, the third respondent has to necessarily consider and pass orders on the petitioners' Applications dated 10.03.2016.

9.Accordingly, there will be a direction to the third respondent to consider the Refund Applications filed by the petitioners dated 10.03.2016, and after affording an opportunity of personal hearing, shall pass orders on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

To

1.Principal Commissioner of Customs (I),
New Customs House, G.S.T.Road,
Meenambakkam, Chennai 600 027.

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Airport Administration
New Customs House, G.S.T.Road,
Meenambakkam, Chennai 600 027.

+3 cc's to Mr.B.Sathish Sundar,advocate,sr.67945

+1 cc to Mr.B.Rabu Manohar,advocate,sr.67946.

ss(co)
krd 9/12

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