In the High Court of Judicature at Madras

Dated: 14.12.2016

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The Honourable Mr.JUSTICE RAJIV SHAKDHER

W.P.No.40815 of 2016
and WMP No.34797 of 2016

Shri.B.Maheswarar Reddy
Power of Attorney of
Venugopal Reddy

.... Petitioner

Vs

1 The Principal Commissioner of Customs, Chennai -I (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: PETITION filed under Article 226 of The Constitution of India praying for issuance of Writ of mandamus directing the respondents to implement the order passed by the Commissioner (Appeals), Chennai in Order-in-Appeal C.Cus-I No.724/2015 dated 30.11.2015 in C4.-I/726/O/2015-Air dated 30.11.2015.

For Petitioner : Mr. T.Chezhiyan
For Respondents : Mr.Rabu Manohar

O R D E R

1. This is a Writ Petition filed to seek a direction qua respondents, to the effect that they should implement the order dated 30.11.2015, passed by the Commissioner of Customs (Appeals), Chennai.

2. I am informed by Mr.Rabu Manohar, who appears for respondents that no counter affidavit has been filed as yet.

3. The record shows that notice in the petition was issued on 28.11.2016.

4. With the consent of counsels for parties, the Writ Petition is taken up for final disposal.

5. The order with respect to which the petitioner seeks compliance, came to be passed, in the background of the following brief facts:

5.1. The record shows that the petitioner is the brother and power of attorney of a person, by the name Sri.Venugopal Reddy, who was intercepted at the Airport on 27.03.2015.

5.2. In the search carried out, it got revealed that Mr.Venogopal Reddy had on himself 566 grams of gold, valued at Rs.15,10,096/-. Thereupon, an adjudication order was passed by the concerned Authority, on 11.09.2015.

5.3. The Adjudicating Authority vide the said order, i.e., order dated 11.09.2015 permitted Sri.Venugopal Reddy to re-ship the gold, on payment of redemption fine, in the sum of Rs.7,50,000/-. In addition, penalty in the sum of Rs.1,50,000/- was also imposed upon Sri.Venugopal Reddy.

5.4. Against the said order-in-original, an appeal was preferred to the Commissioner of Customs (Appeals). The Commissioner of Customs (Appeals) vide order dated 30.11.2015 reduced the redemption fine qua re-export from Rs.7,50,000/- to Rs.2,50,000/- and similarly, reduced the penalty imposed in the matter from Rs.1,50,000/- to Rs.75,000/-.

6. I am informed that the respondents have preferred a revision petition against the order passed by the Commissioner of Customs (Appeals). I am further informed that the said revision petition is pending adjudication.

7. Admittedly, no interim order was granted by the revisional authority in favour of the respondents. It is also represented before me by the counsel for the respondents that the officer, who would act as a revisional authority, is presently, holding a rank, which equivalent to post of Commissioner of Customs (Appeals).

8. Counsel for the respondents says that it is proposed to confer the power of revision on an officer, holding a rank, higher than the Commissioner of Customs (Appeals).

9. It appears that this change is required to be brought about, in view of the decision of the Punjab and Haryana High Court: NVR Forgings V. Union of India - 2016 (335) ELT 679 (P&H).

9.1. Via the said judgment, the Punjab and Haryana High Court has ruled that since the rank of the revisional authority and that of the appellate authority was the same, the order passed by the revisional authority, could not be sustained. The observations made by the Court in paragraph 8 and 9 of the judgment, being relevant, are set forth below for the sake of convenience:

> "....8. In the present case, the impugned order was passed by the Joint Secretary to Government of India who was also Commissioner of Central Excise and Customs. Thus, the order-in-appeal as well as revisionary order had been passed by the officers of the same rank which is not permissible as per law. Adverting to the judgments relied upon by the learned counsel for the respondents, it may be noticed that the said decisions were based on individual fact situation involved therein. Thus, the respondents cannot derive any advantage from the said pronouncements.
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> 9. In view of the above, the petitions are allowed. The impugned order dated 28-8-2015, Annexure P.8 in CWP No.24967 of 2015 and order dated 16-9-2015, Annexure P.5 in CWP No.26321 of 2015 are set aside. However, liberty is granted to the State to proceed afresh in accordance with law but without prejudice to the rights of the parties."

9.2. Pertinently, the Special Leave Petition preferred against the aforementioned judgment of the Punjab and Haryana High Court was dismissed in limine vide order dated 17.10.2016.

The Special Leave Petition was numbered as: SLP(CC) No.19063 of 2016.

10. Having regard to the aforesaid circumstances and the submission made by the counsel for the respondents that the rank of the revisional authority would be upgraded to a level higher than that of the Commissioner of Customs (Appeals), I am inclined to dispose of the present Writ Petition with the following directions:

10.1. The petitioner, i.e., brother of the power of attorney, will furnish a certificate of an Indian Nationalised Bank evidencing that there is, at least, an amount, equivalent to Rs.5,75,000/-, available in the account of Sri.Venugopal Reddy.

10.2. The certificate so issued would also state that at no given point in time, the balance in the account of Sri.Venugopal Reddy would be allowed to fall below the sum of Rs.5,75,000/-. Furthermore, the certificate would hold out that in case, the petitioner is unsuccessful in the pending revisional proceedings, then, the said sum would be made available, wholly or partly, to recover the redemption fine and penalty imposed by the concerned authority.

10.3. The revisional authority, upon ascertaining the veracity of the bank certificate, will allow the petitioner to re-export the subject goods, i.e., gold, upon payment of redemption fine and penalty imposed by the appellate authority, i.e., Commissioner of Customs (Appeals), vide order dated 30.05.2015.

10.4. The revisional authority will decide the petition pending before it, with due expedition, though not later than eight (8) weeks from the date of receipt of a copy of this order.

11. Resultantly, the connected miscellaneous petition stands closed. There will be no order as to costs.

Sd/-
Assistant Registrar(CS III)

//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 - 600 027.

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

+1cc to Mr.T.Chezhiyan, Advocate SR.72851
+1cc to Mr.B.Rabumanohar, Advocate Sr.72776

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