IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2017

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.13854 of 2017

Jang Bahadur ... Petitioner

Vs.

The Assistant Commissioner of Customs,
Air Admin, Ware House, Air Customs,
Airport, Anna International Terminal,
Chennai International Airport,
Tirusoolam, Chennai. ... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus to direct the respondent to release the goods detained in O.S.No.1338 of 2015 Air by implementing and give effect to the Order-in-Appeal viz., C.Cus-I No.243 of 2016 in C4-I/151/O/2016 Air Dated 25.05.2016 within a reasonable time frame.

For Petitioner : Mr.A.Ganesh

For Respondent : Mr.A.P.Srinivas,
Standing Counsel.

O R D E R

Heard Mr.A.Ganesh, learned counsel for the petitioner and Mr.A.P.Srinivas, learned Standing Counsel for the respondent. With the consent on either side the writ petition itself is taken up for disposal.

2. The petitioner by way of this writ petition seeks for implementating and giving effect to the Order-in-Appeal viz., C.Cus-I No.243 of 2016 in C4-I/151/O/2016 Air dated 25.05.2016 within a reasonable time. The petitioner on 14.12.2015, was bound for Bangkok from Chennai International Airport, he was intercepted by the Customs Officers at the departure and Foreign Currency of 13500 Euros and Indian Currency of Rs.10,00,000/- was seized from the petitioner, proceedings were initiated and the Foreign Currencies were confiscated under Section 113(d)(e)(h) of the Customs Act and penalty was imposed under Section 114

(i) of the Act by order dated 30.01.2016 passed by the Joint Commissioner of Customs, Airport, New Customs House, Chennai. The petitioner filed an appeal before the Commissioner of Customs (Appeals), Chennai and the appeal was partly allowed by converting the absolute confiscation of the Foreign Currency viz., 13500 Euros and extending benefit of redemption under Section 125 of the customs Act on payment of fine of Rs.2,00,000/-. The Appellate Commissioner upheld the absolute confiscation of Indian Currency and passed an order on 25.05.2016. The petitioner had requested the respondent to implement the said order. But, no action was initiated on the petitioner's representation, the petitioner is before this Court by way of this Writ petition.

3. The learned counsel appearing for the petitioner has reiterated the factual submissions and prayed that the Court may direct the respondent to implement the order passed by the Commissioner dated 25.05.2016.

4. The learned Standing Counsel appearing for the respondent vehemently contended that, against the order passed by the Commissioner of Customs (Appeals), the Revenue preferred a revision to the Central Government and pending revision, if the Foreign Currencies are to be released the interest of the Revenue will be affected and if the Court is inclined to pass such an order, then the petitioner should be directed to give Bank guarantee for the full value of the Foreign Currency.

5. After hearing the learned counsel for the parties and perusing the materials placed on record it has to be seen as to whether the respondent can refuse to implement the order passed by the Commissioner of Customs (Appeals), on the ground that they have filed a revision before the Central Government. The High Court of Punjab and Haryana in the case of NVR Forgings Vs. Union of India reported in (2016) 335 ELT 679 considering the validity of an order passed by the Revisional Authority of the Central Government in the Cadre of Joint Secretary to Government testing the correctness of the order passed by the Commissioner of Customs (Appeals) and while considering the validity of such an order, held that the cadre of Joint Secretary to the Government of India is equivalent to the cadre of Commissioner of customs (Appeals) and therefore, the Revisional Authority cannot sit in judgment against the order passed by the Commissioner of Customs (Appeals). The operative portion of the order reads as follows;

> "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. According to the judgments relied upon by the learned counsel for the respondents, it may be noticed that the said decision were based on individual factual situation involved therein. Thus, the respondents cannot derive any advantage from the said pronouncements.

8. The Special Leave petition filed against the above order in SLP(Civil) CC.No.19063 of 2016 was dismissed by the Hon'ble Supreme Court, on 17.10.2016 and the Review Petition filed by the Central Government challenging the said order, dated 17.10.2016 was also dismissed on 07.11.2016. Thus, as on date, the Revisional Authority would not have jurisdiction to test the correctness of the order passed by the Commissioner of Customs (Appeal-I)"

6. In the light of the above legal position, non-implementing order passed by the Commissioner of Customs (Appeals) on the ground that the revision was pending, cannot be countenanced. The second issue is as to how the interest of Revenue should be safe-guarded. Admittedly, the Indian Currency which was seized from the petitioner has been absolutely confiscated. The Appellate Authority after taking note of the facts and circumstances of the case held that the export of Foreign Currency is not prohibited and therefore, allowed for redemption of the same. In this regard, the Commissioner of Customs (Appeals) referred to two orders passed by the Culcutta High Court and the CESTAT and taking note of the fact that the petitioner was working in Dubai since 2008, and taking into consideration all other the factors converted the absolute confiscation and extended the redemption of the Foreign Currency under Section 125 of the Customs Act on payment of fine of Rs.2,00,000/-. Thus, the petitioner having succeeded before the Commissioner of Customs (Appeals), cannot be directed to file Bank guarantee for the entire amount and the Revenue, which has filed the revision, having lost before the Commissioner of Customs (Appeals), it would be sufficient, if a bond is executed by the petitioner to secure the interest.

7. For all the above reasons, this writ petition is disposed of by directing the respondent to release the Foreign Currencies valued at Rs.19,42,975/- on the payment of fine of Rs.2,00,000/- and the petitioner shall execute a bond for the full value of the Foreign Currency and keep the bond alive to secure the interest by the Revenue. In the event, the Revenue succeeds

before the Revisional Authority viz., the Central Government, the above bond may be encashed by the respondent within 15 days from the date on which the petitioner furnishes the same. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

abr

To

The Assistant Commissioner of Customs,
Air Admin, Ware House, Air Customs,
Airport, Anna International Terminal,
Chennai International Airport,
Tirusoolam, Chennai.

+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.52908

W.P.No.13854 of 2017

RJ(CO)
CS/24/08/17