IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.01.2017

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THE HONOURABLE MR. JUSTICE RAJIV SHAKDHER

W.P.No.16681 of 2016
and WMP No.14411 of 2016

Shaik Shamim Banu,
Piler Road, T.Sundupally,
Kadapa, YSR District,
Andhra Pradesh
rep. by her Power of Attorney of
Shaik Mohammad Ali,
S/o.Khasu Maiah Shaik,
Door No.8/1226-1, Agadi Street,
Andhra Pradesh .. Petitioner

vs.

1. Joint Secretary,
   Government of India,
   Ministry of Finance,
   14, HUDCO Vishala Buildings,
   B Wing, 6th Floor, Bhikaji Cama Place,
   New Delhi-110 066.

2. The Commissioner of Customs (Appeal),
   Custom House,
   No.60, Rajaji Salai,
   Chennai-600 001.

3. The Joint Commissioner of Customs,
   O/o.The Chief Commissioner of Customs,
   Custom House,
   No.60, Rajaji Salai,
   Chennai-600 001.

4. The Principal Commissioner of Customs,
   Commissionerate - I,
   New Customs House,
   Air Cargo Complex,
   Meenambakkam,
   Chennai-600 027. .. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus or any other order or direction in the nature of Writ, calling for the records relating to the order passed by the first respondent in F.No.380/27/B/15RA and

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F.No.380/23/B/15_RA dated 22.01.2016, and to quash the same and further direct the fourth respondent to implement the order passed by the second respondent.

For Petitioner : Mr.T.Chezhiyan

For Respondents: Mr.T.Pramod Kumar Chopda, Standing Counsel

ORDER

1. This writ petition is directed against the order dated 22.01.2016, passed by the Government of India (in short "GOI"), Ministry of Finance, Department of Revenue.

1.1. The impugned order has been passed by the GOI, via its Joint Secretary, in exercise of power under Section 129 DD of the Customs Tax Act, 1962 (in short "the Act").

2. The brief facts, which are required to be noticed for disposal of the writ petition, are as follows :

2.1. The order-in-original dated 20.04.2015, was passed, whereby, the petitioner was given the option of redemption of two (2) gold bangles and four (4) gold bars, totally weighing 1375 grams. A redemption fine in the sum of Rs.17,50,000/- along with penalty equivalent to a sum of Rs.2,50,000/- was demanded.

2.2. The petitioner, being aggrieved by the quantum of fine and penalty, preferred an appeal, which was disposed of by the Commissioner of Appeals, vide order dated 24.06.2015.

2.3. By virtue of the order passed by the Commissioner of Appeals, the redemption fine was reduced to Rs.7,00,000/-, while the penalty was reduced to Rs.1,00,000/-.

2.4. To be noted, the record shows that the notice was served on the Revenue to secure its participation in the appeal preferred by the petitioner. The Revenue, however, chose not to participate.

2.5. The record also shows that the Revenue did file an appeal against the order-in-original dated 20.04.2015, which was dismissed on 06.08.2015, on the ground that the petitioner's appeal had already been decided.

2.6. The Revenue, being aggrieved, thus, approached the Revisional Authority, impugning not only the order of the Commissioner of Appeal dated 24.06.2015, passed in the petitioner's appeal, but also, the order dated 06.08.2015, passed in its own appeal.

2.7. The Revisional Authority, via, the impugned order, allowed the Department's appeal and directed absolute confiscation of the two (2) gold bangles and four (4) gold bars totally weighing 1375 grams. Furthermore, penalty in the sum of Rs.2,50,000/- was also imposed on the petitioner, under Section 112 of the Act.

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3. The petitioner, being aggrieved, has preferred the captioned writ petition.

4. Learned counsel for the petitioner says that the impugned order has been passed by an Officer, who was not vested with the jurisdiction to hear and adjudicate upon the matter. The reason, according to the learned counsel for the petitioner, which propels the petitioner to take such a stand is the fact that the Officer, who exercised the jurisdiction in the matter was of the same rank, as that of the Commissioner of Appeals, whose order was assailed before him.

4.1. To be noted, the impugned order has been passed by the Joint Secretary to the GOI. It is common ground that the Commissioner of Appeals holds the same rank as the Joint Secretary to GOI.

4.2. Therefore, according to the learned counsel, this singular fact has impregnated the impugned order with a jurisdictional flaw. In support of his submission, learned counsel for the petitioner relies upon the judgement of the Punjab and Haryana High Court in NVR Forgings Vs. Union of India, 2016 (335) ELT 675.

4.3. Learned counsel for the petitioner further says that a Special Leave Petition was preferred against the aforementioned judgement of the Punjab and Haryana High Court, which was dismissed in limine, by the Supreme Court on 17.10.2016.

4.4. I am informed that the Special Leave Petition was numbered as : SLP (Civil) CC No.19063 of 2016.

5. Mr.T.Pramod Kumar Chopda, who appears for the respondents, affirms the position that the judgement of the Punjab and Haryana High Court in NVR Forgings's case has been sustained by the Supreme Court, in view of the dismissal of the SLP.

5.1. Mr.Chopda, says that the GOI is in the process of taking corrective measures by conferring revisional power in an officer, who is higher in rank to the Commissioner of Appeals.

6. I have heard the learned counsels for the parties and perused the record.

7. For the sake of convenience, the relevant observations of the Punjab and Haryana High Court in NVR Forgings's case are extracted hereinbelow :

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> 8. In the present case, the impugned order was passed by the Joint Secretary to Government of India

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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 respondent cannot derive any advantage from the said pronouncements."

8. It is not in dispute before me that the Commissioner of Appeals and the Joint Secretary of the GOI, who exercised the power of the revisional authority, hold the same rank.

9. Having regard to the observations made in NVR Forging's case, the contention of the petitioner will have to be sustained.

10. Accordingly, the impugned order is set aside, with liberty to the GOI to pass a fresh order within a period of eight (8) weeks from the date of receipt of a copy of the order, after corrective measures are taken.

10.1. In case, the requisite corrective steps are not taken, respondents No.4, will ensure compliance of the order dated 24.06.2015, passed by the Commissioner of Appeals.

11. The captioned writ petition is disposed of in terms of the aforesaid direction. Consequently, pending application shall stand closed. There shall, however, be no order as to costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Joint Secretary,
Government of India,
Ministry of Finance,
14, HUDCO Vishala Buildings, B Wing,
6th Floor, Bhikaji Cama Place,
New Delhi-110 066.

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4. The Principal Commissioner of Customs,
Commissionerate - I,
New Customs House,
Air Cargo Complex,
Meenambakkam,
Chennai-600 027.

+2ccs to Mr.T. Chezhiyan, Advocate, S.R.No.4580
+1cc to Mr.J. Pramodkumar, Advocate, S.R.No.4499

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