IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2017

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.25889 of 2017
and
W.M.P.No.27238 of 2017

K.Srinivasulu ...Petitioner

Vs.

The Commissioner of Customs,
Chennai III Commissionerate,
Customs House, No.60, Rajaji Salai,
Chennai - 600 001. ...Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records of the respondent Order-in-Original No.58251/2017 dated 31.08.2017 in F.No.O.S.15/2014-PAU (DRI/CZU/VIII/48/15(INT) 15)/2014 to quash the same.

For Petitioner : Mr.T.Chezhiyan

For Respondent : M/s.Hema Murali Krishnan
Senior Panel Counsel

ORDER

Heard Mr.T.Chezhiyan, learned counsel for the petitioner and Mr.Hema Murali Krishnan, learned Senior Panel Counsel for the respondent.

2.The petitioner is before this Court challenging the Order-in-Original No.58251/2017 dated 31.08.2017 passed by the Commissioner of Customs. The said order not only covers the petitioner, but there are six other parties against whom various orders and directions have been issued apart from imposing penalty. As against the petitioner a sum of Rs.5,00,000/- has been imposed as penalty under Section 112(b) of the Customs Act, 1962. In this regard, the learned counsel for the petitioner laid much emphasis on the findings recorded by the Commissioner in paragraph 51 of the impugned order to state that the Commissioner has wholly exonerated the petitioner. But, however, in the penultimate portion of the order imposed penalty.

3.On a perusal of the factual matrix as could be seen from the show cause notice dated 05.11.2014 as well as the impugned assessment order, it is clear that the petitioner was a Director of M/s.SLN Securities & Forex Private Limited and another Director was P.Balaji. The question is as to whether the gold which was seized from the premises of the Company is of a foreign origin or not. The petitioner has taken a stand before the Adjudicating Authority that it is of Indian origin and payment was made through RTGS.

4.Thus, in my view, the writ petition cannot be entertained by merely taking note of the observations made by the Commissioner in paragraph 51 as it appears to be an intricate and complex transaction between the parties. Therefore, the disputed questions of fact have to be gone into, which cannot be done in a writ petition. More so, when the petitioner has an effective alternative remedy against the impugned order and without exhausting the same, the petitioner is not justified in approaching this Court by way of this writ petition.

5.For the above reason, the Writ Petition is held to be not maintainable and accordingly, it is dismissed. The petitioner is given liberty to prefer an appeal as against the impugned order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

Sgl

To

The Commissioner of Customs,
Chennai III Commissionerate,
Customs House, No.60, Rajaji Salai,
Chennai - 600 001.

+1cc to Mr.T.Chezhiyan, Advocate, S.R.No.71475

+1cc to M/s.Hema Murali Krishnan, Advocate, S.R.No.71467

W.P.No.25889 of 2017

AR V(CO)
PSI (28/10/2017)