IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2017

CORAM:

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.19037 to 19039 of 2017 and
W.M.P.Nos. 20553, 20554 & 20555 of 2017

1. Smt.Samsun Fareeda ..Petitioner in W.P.No.19037 of 2017

2. Smt. Sithy Nooriya ..Petitioner in W.P.No.19038 of 2017

3. Smt. Aleema Zambrose ..Petitioner in W.P.No.19039 of 2017

Vs.

1. Principal Commissioner of Customs (I),
New Customs House, GST Road,
Meenambakkam, Chennai-600 027.

2. Joint Commissioner of Customs (Airport),
Anna International Airport,
New Customs House, GST Road,
Meenambakkam, Chennai-27. ..Respondents in all three W.Ps

Prayer: Writ petitions filed under Article 226 of the Constitution of India praying for a issuance of Writ of Mandamus, directing the respondents herein to cause implementation of the order of the Commissioner of Customs (Appeal - I) in Order-in-Appeal C. Cus. - I Nos.610/2015 dated 9.9.2015, 579/2015 dated 28.09.2015 and 582/2015 dated 28.09.2015 and cause release of 3 nos. of gold bracelets and one number of gold chain totally weighing 334.50 (W.P.No.19037/2017), gold jewellery totally weighing 241 and 657 grams (in W.P.Nos.19038 and 19039/2017) and valued at Rs.9,43,657/-, 6,69,142/- and 16,61,198/- on payment of redemption fine of Rs.3,50,000/-, Rs.2,00,000/-and 5,25,000/-and personal penalty of Rs.75,000/-, Rs.60,000/- Rs.1,50,000/- for re-export respectively.

For Petitioners (in All WPs) : Mr.D.R.Krishnanandh for Mr.B.Satish Sundar

For Respondent No.1 (in All WPs) : Mr.V.Sundareswaran Senior panel counsel

For R2 (in All WPs) : Mr.V.Ramasamy Junior Standing Counsel

O R D E R

Heard Dr.Krishnandh, appearing for Mr.B.Satish Sundar, learned counsel for the petitioner, Mr.V.Sundereswaran, learned counsel for the first respondent and Mr.V.Ramasamy, junior Standing Counsel for the second Respondent.

2. The prayer sought for in these writ petitions are identical in as much as the petitioners, who are all Srilankan nationals have sought for issuance of a writ of mandamus to implement the order passed by the Commissioner (Appeals), whereby, the Commissioner (Appeals) has directed the release of the gold jewellery for re export on payment of redemption fine and personal penalty. It may not be necessary for this Court to refer to the facts of the individual case as this Court proposes to dispose of the writ petitions on a preliminary point.

3. The contention raised by the petitioners in these writ petitions is that though the respondent Department, have preferred a revision petition before the Secretary to Government of India under Section 129 DD of the Customs Act, 1962 and show cause notice of such revision has been received by the petitioner on 2.4.2016 and they have submitted their reply through their counsel on 06.06.2016, the Revisional Authority does not have jurisdiction to set aside the order passed by the Commissioner (Appeals) since both the officers are in the same cadre.

4. In support of such contention, the learned counsel for the petitioners placed reliance on the decision of the Hon'ble Punjab and Haryana High Court in the case of NVR Forgings Vs.Union of India reported in 2016 (335) ELT 679 (P&H), wherein, the Court has held that an order-in-appeal and the revisionary order being passed by the officers of the same rank is not permissible in law. The learned counsel also referred to the other orders passed by this Court, wherein, directions have been

issued for implementation of the order passed by the Commissioner (Appeals) either for return of gold or jewelery.

5. Mr.V.Sundareswaran learned standing counsel for the first respondent would contend that the decision in the case of NVR Forgings (supra) is clearly distinguishable and though the matter was challenged before the Hon'ble Supreme Court, the Special Leave Petition has been dismissed without assigning any reasons and therefore, the respondents are entitled to canvass before this Court as regards the applicability of the decision and the Revenue has got sufficient points to distinguish the said decision and establish before this Court that the same is not binding on this Court and it does not lay down the correct legal position.

6. I find that the show cause notice under Section 129 DD of the Act dated 2.4.2016 has been received by all the petitioners and they have also submitted a detailed reply dated 06.06.2016. However, I find, in the reply, the petitioners have not specifically raised the plea with regard to the jurisdiction of the Revisional Authority to decide the matter as canvassed before this Court in these writ petitions. Since the question of jurisdiction can also be decided by the very same authority, namely, the Revisional Authority, this court is inclined to issue appropriate directions in this regard.

7. Accordingly, the writ petitions are disposed of, with a direction to the petitioners to file additional reply to the show cause notice dated 2.4.2016, within a period of 10 days' from the date of receipt of a copy of this order with an advance copy served on the respondents. The Revisional Authority, on receipt of the additional reply from the petitioners, shall fix the date for personal hearing to the petitioners as well as the officials of the department and decide the revision petition on merits and in accordance with law. While doing so, the Revisional Authority shall decide the question of his jurisdiction to decide the revision petition as canvassed by the petitioners as first among the several issues. It is open to the department to canvass all points before the revisional authority considering the fact that the Commissioner (Appeals) had passed an order in favour of the petitioners on 9.9.2015 and the revisional application was presented by the Department only in January 2016. The Revisional Authority shall endeavour to decide the revision petition as directed above, within a period of 15 days' from the date on which

personal hearing is concluded. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

svki/sli

To

1. The Principal Commissioner of Customs (I),
New Customs House, GST Road,
Meenambakkam, Chennai-600 027.

2. The Joint Commissioner of Customs (Airport),
Anna International Airport,
New Customs House, GST Road,
Meenambakkam, Chennai-27.

+3cc to M/s.B.sathish Sundar, Advocate, S.R.No.54187

+1cc to M/s.K.S.Ramasamy, Advocate, S.R.No.53351

+2cc to m/s.V.Sundareswaran, S.R.No.53620 & 53621

W.P.No.19037 to 19039 of 2017

EV(CO)
CU(29/08/2017)