IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2017

CORAM

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition Nos.32981 to 32983 of 2012
and
M.P.No.1 of 2012 (3 in numbers

Kamal Sarbudeen ... Petitioner in W.P.32981 of 2012

Mytheen Abuthahir ... Petitioner in W.P.32982 of 2012

Sulthan Abthalif ... Petitioner in W.P.32983 of 2012

vs

1. The Additional Commissioner
of customs (Air),
Customs House, Rajaji Salai,
Chennai . 1.

2. The Commissioner of customs (Appeals),
Customs House, Rajaji Salai,
Chennai - 1.

3. The Joint Secretary to the Government of India, (R.A)
Ministry of Finance Department of Revenue,
No.14, Hudgo Vishala Building, B Wing,
6th Floor, Bikaji Cama Place,
New Delhi - 110 066.

... Respondents in all W.Ps

Prayer in W.P.No.32981 of 2012:-

Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records, relating to the order passed by the third respondent, in Order No.352-354/12-Cus dated 28.08.2012 in F.No.373/152-154/B/11-RA-CUS and to quash the same and to direct the first respondent herein to grant an option to pay redemption fine in lieu of confiscation in respect of goods which is subject matter of proceeding in O.S.No.32, 33 and 31 respectively of 2010-INT-AIR/OS.No.769, 770 and 768 respectively of 2010-AIU-AIR dated 03.05.2011 on the file of first respondent under Section 125 of the customs act.

For Petitioner in all W.Ps : Mr.K.V.Sajeev Kumar for M/s.Royan Law Associates

For R1 and R2 in all W.Ps : Mr.G.M.Syed Nurullah Sheriff Senior Panel Counsel

For R3 in all W.Ps : Mr.T.V.Krishnamachari

COMMON ORDER

Heard Mr.K.V.Sajeev Kumar, the learned counsel for M/s. Royan Law Associates, the learned counsel for the petitioners and Mr.G.M.Syed Nurullah Sheriff, the learned Senior Panel Counsel appearing for the respondents 1 and 2, and Mr.T.V.Krishnamachari, learned counsel appearing for the respondent 3.

2. The petitioners have challenged the order passed by the third respondent, Revisional Authority, in exercise of his power under Section 129 DD of Customs Act, 1962 (hereinafter, referred to as the Act). The Revision Applications filed by the petitioners have been rejected by a common order dated 28.08.2012, which are impugned in these Writ Petitions.

3. The facts are common to all the three cases.

i The petitioners arrived at Chennai Airport from abroad, and brought certain goods, which were not declared. On suspicion, their baggage was examined, which resulted in recovery of miscellaneous electrical goods and iridium of highest purity. The petitioners were arrested for commission of offence under Section 104 of the Act, and produced before the learned Additional Chief Metropolitan Magistrate for criminal prosecution. Since the goods, which were of commercial quantity, were not declared, and was attempted to be smuggled into India in violation of Sections 77 and 79 of Act read with para 2.20 of the Foreign Trade Policy 2009 -14, and Section 3(3) of the Foreign Trade (D and R) Act 1992. Adjudication proceedings was commenced, and the adjudicating Authority, viz., the first respondent, after affording full and effective opportunity to the petitioners, ordered absolute confiscation of the goods under Section 111(d) (l) and (m) of the Act, and imposed penalty under Section 112 (a) of the Act.

ii) The petitioners, being aggrieved by the order passed by the first respondent, preferred Appeals to the Commissioner (Appeals). The Commissioner (Appeals) considered the matters independently, and by assigning separate reasons, dismissed the Appeals by order, dated 29.07.2011. Challenging the order passed by the Appellate Authority, the petitioners filed Revision Applications before the third respondent/Revisional Authority under Section 129 DD of the Act.

iii) The Revisional Authority, after carefully examining the factual position and taking note of the fact that the goods have been attempted to be smuggled into India and the goods having not been declared, upheld the absolute confiscation, as ordered by the first respondent and confirmed by the second respondent.

4. The petitioners are before this Court, challenging the said orders only on the ground that the Authorities are concurrently erred in not granting option to pay redemption fine under Section 125 of the Act to the petitioners. Sub-Section 1 of Section 125 states that, whenever confiscation of any goods is authorised by the Act, the Officer, adjudicating it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act, or, in the case of any other goods, given to the owner of the goods, or such other person, from whom, the goods have been seized, an option to pay in lieu of confiscation, such as fine, as the said Officer thinks fit.

5. The learned counsel appearing for the petitioners would submit that the goods brought by the petitioners are not prohibited goods, and therefore, the option to redeem it ought to have been granted under Section 125 of the Act, as the expression used is 'Shall'. First, it has to be noted that the expression used under Section 125(1) at the first instance, is the expression 'may', and this would apply to the goods of importation/exportation whereof, the goods are prohibited. If it is otherwise, then, the said Officer shall give the party an option to redeem.

6. In the instant cases, admittedly, the goods were not declared by the petitioners, while they landed in Chennai Airport. In terms of para No.2.20 of the Foreign Trade Policy, a bona fide baggage may be imported along with a person arriving at in India from a Foreign Country. In terms of Section 3(3) of the Foreign Trade (D and R), Act, 1992, all goods, to which, sub-section (2) applies shall be deemed to be the goods, imported or exported, of which has been prohibited under Section

11 of the Act. Therefore, when the baggage of the petitioners was treated as non bona fide baggage, the goods therein were rightly treated as prohibited goods under Section 11 of the Act.

7. The three authorities have assigned independent reasons for rejecting the petitioners prayer for redemption. There is no factual or legal error in the decision making process for this Court to exercise its jurisdiction under Article 226 of the Constitution of India.

8. Thus, for all the above reasons, the petitioners have not made out any grounds for interference with the impugned orders. Accordingly, these Writ Petitions fails and they are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The Additional Commissioner of customs (Air), Customs House, Rajaji Salai, Chennai . 1.

2. The Commissioner of customs (Appeals), Customs House, Rajaji Salai, Chennai - 1.

3. The Joint Secretary to the Government of India, (R.A) Ministry of Finance Department of Revenue, No.14, Hudgo Vishala Building, B Wing, 6th Floor, Bikaji Cama Place, New Delhi - 110 066.

+1cc to K.V.Sajeev Kumar, Advocate sr.64431

+1cc to Syed Norullah, Advocate sr.64768

Writ Petition Nos.32981 to 32983 of 2012

ss(19/9/2017)