IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.07.2017

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

Writ Petition No.41980 of 2016
and
W.M.P.No.35928 of 2016

Abdul Rahim Sahabudeen
rep. by his Power of Attorney,
Dr.Ajmal Ahmed. ...Petitioner

Vs

1. The Principal Commissioner of Customs (1)
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 - 600 027. ...Respondents

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Mandamus, directing the respondents to return the Indian Currencies to the tune of Rs.19,00,000/- pursuant to the order of the Commissioner of Customs (Appeal-I) in Order-in-Appeal, C.Cus-I No.11 and 12/2016, dated 29.01.2016, on payment of redemption fine of Rs.5,00,000/- and personal penalty of Rs.75,000/-.

For Petitioner : Dr.S.Krishnandh
for Ms/B.Satish Sundar

For Respondent : Mrs.R.Hemalatha
Senior Standing Counsel

O R D E R

Heard Dr.S.Krishnandh, the learned counsel appearing for the petitioner and M/s.R.Hemalatha, the learned Senior Standing Counsel for the respondents. With the consent of parties, the Writ Petition is taken up for final disposal.

2. This Writ Petition has been filed by the petitioner, praying for a direction upon the respondent/Customs Department, to return the Indian Currencies to the tune of Rs.19,00,000/-, in terms of the order passed by the Commissioner of Customs (Appeal-I) in Order-in-Appeal, dated 29.01.2016, on payment of redemption fine of Rs.5,00,000/- and personal penalty of Rs.75,000/-.

3. The petitioner was a passenger, proceeding towards Singapore, and he was found in possession of Indian currencies of Rs.19,00,000/-, without declaration. The currencies were confiscated, in terms of Section 113 (d) (e) and (h) of the Customs Act, 1962 (henceforth referred to as, Act) and allowed for redemption on payment of redemption fine of Rs.7,50,000/- under Section 125 of the Act and personal penalty of Rs.1,00,000/- was imposed on the petitioner, under Section 114 (i) of the Act. Challenging the said order, the petitioner preferred Appeal before the Commissioner of Customs (Appeal-I). The Commissioner of Customs (Appeal-I) after hearing the petitioner and taking note of the legal position, held that the order passed by the Adjudicating Authority is proper, and there is no infirmity. However, the Commissioner of Customs (Appeal-I) granted a relief to the petitioner, by reducing the redemption fine of Rs.7,50,000/- to Rs.5,00,000/-and personal penalty from Rs.1,00,000/- to Rs.75,000/-. The petitioner, now seeks implementation of the said order, by filing the present Writ Petition, to issue appropriate direction.

4. The respondent/Customs Department would contend that, they will not be in a position to comply with the order passed by the Commissioner of Customs (Appeal-I), on the ground that, they have filed Revision Petition to the Central Government, under Section 129 (d) of the Act along with Stay Petition, and this Revision Petition was filed before the Revisional Authority during May, 2016 and the Revisional Authority has entertained the Revision and issued a show cause notice to the petitioner, July, 2016. Therefore, the respondent/Department would contend that the petitioner should have awaited the outcome of the Revision Petition filed by the Department as against the order passed by the Commissioner of Customs (Appeal-I).

5. Some what an identical issue was considered by this Court, in the case of (Shri Munivela Bharathi Vs. Principal

Commissioner of Customs (I), and another), in W.P.Nos.26496 to 26498 of 2016. In the said Writ Petition, identical contention was raised by the Department, stating that the Revision Petition is pending as against the order of the Commissioner (Appeals-), and therefore, the Court should not direct redemption of the gold bars in the said case. This Court did not accept the said contention, since the Hon'ble Division Bench of High Court of Punjab and Haryana, in the case of (NVR Forgings Vs. Union of India) reported in (2016) 335 ELT 679, has held that revision by the Central Government entrusted to a joint Secretary level Officer equal to Commissioner was not empowered to pass revisional order against the order passed by the Officer of the same rank, and therefore, the order passed by the Revision Authority, which was challenged in the Writ Petition was set aside. By following the said decision, a direction was issued to release the gold bars/jewelleries on the petitioner furnishing a bond, securing interest of the revenue.

6. The learned Standing Counsel for the respondents referred to the decision rendered by me in (Haja Mohideen Abdul Jaleel Vs. Union of India and two others) in W.P.Nos.32059 to 32062 of 2016, dated 01.12.2016, wherein, the Court set aside the order passed by the Appellate Authority and remanded the matter to the Appellate Authority for fresh consideration. Such direction was issued by this Court, taking note of the decision rendered in the case of (Malabaar Diamond Gallery Pvt. Ltd., Vs. Additional Director General, Directorate of Revenue Intelligence, Chennai and two others) in W.A.No.377 of 2016, dated 28.07.2016, by which, the Appeal filed the person, who sought for release of the goods was rejected. In the instant case, distinction is that, the Commissioner of Customs (Appeals-I) concurred with the findings recorded by the Adjudicating Authority, and only relief granted to the petitioner was a slight reduction in redemption for fine and personal penalty. Therefore, this Court is of the view that the decision in Malabaar Diamond Gallery's case (referred to supra) cannot be applied to the facts and circumstances of the case.

7. As mentioned above, in the case of NVR Forgings (referred to supra), the Division Bench of High Court of Punjab and Haryana has set aside the order passed by the Revisional Authority, who is an officer in the cadre of Joint Secretary equivalent to the Commissioner of Police. 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).

9. In the light of the above findings, this Court is inclined to issue direction to the respondents for implementation of the order passed by the Commissioner of Customs (Appeal-I) by releasing the Indian Currencies, subject to the payment of redemption fine and penalty, as ordered by the Commissioner of Customs (Appeal-I) and furnishing a bond securing the interest of the Revenue. In the event, the jurisdictional aspect, as in NVR Forgings's case (referred to supra) is rectified and the Revisional Authority takes up the matter, and the Revenue Department is able to succeed before the Revisional Authority, they will be at liberty to proceed against the appellant, in terms of the provisions of the Customs Act, and the rules framed thereunder.

10. For the reasons stated hereinabove, the Writ Petition is disposed of, directing the respondents to release the Indian currencies, as ordered by the Commissioner of Customs (Appeal-I) by order, dated 29.01.2016, on the petitioner paying redemption fine and the penalty, and on executing a bond securing the interest of the revenue. In terms of the observations made above, these directions to be complied with, within a period of 15 days from the date on which the petitioner furnishes the bond. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Commissioner of Customs (1)
   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 - 600 027.

3. The Commissioner of Customs (Appeals - I)
   60, Rajaji Salai, Custom House,
   Chennai-1

+1cc to M/s.B.Satish Sundar, Advocate, S.R.No.46465

Writ Petition No.41980 of 2016

SV(CO)
CS/21/07/17