IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2017

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THE HONOURABLE MR. JUSTICE RAJIV SHAKDHER

W.P. No. 42491 of 2016
&
W.M.P. No. 36383 of 2016

Shri Thamboli Shafiulla,
18/130-1, Sadhu Chenganna Street,
Kadappa 561 001. ...Petitioner

Vs.

1. The Principal Commissioner of Customs,
Chennai - I (Airport),
O/o. The Principal Commissioner of
Customs, Commissionerate,
New Customs House,
Meenambakkam,
Chennai - 600 027.

2. The Assistant Commissioner of
Customs (Airport),
Anna International Airport,
Meenambakkam,
Chennai - 600 027. ...Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Mandamus directing the respondents to implement the order passed by the Commissioner (Appeals), Chennai in Order in Appeal No. In C.Cus-I No. 407 & 408/2015 dated 24.08.2015 in F.No.C4.-I/373 & 379 /o/2015-Air dated 24.8.2015.

For Petitioner : Mr.T. Chezhiyan
For Respondents : Mr.N. Senthikumar,
Standing Counsel

O R D E R

1. This is a writ petition whereby a direction is sought qua the respondents to the effect that they should comply with the order of Commissioner of Customs (Appeals), Chennai, dated 24.08.2015.

2. In order to adjudicate upon the present writ petition, the following facts are required to be noticed.

2.1 It appears that the petitioner, on his arrival in India, was intercepted at Anna International Airport, Chennai, on 31.01.2015, by the Customs officers. The petitioner was subjected to search, which revealed that he was carrying 268 gms of gold, valued at Rs.7,54,688/-.

2.2 Consequent thereto, a show-cause notice was issued, which led to the passing of the order-in-original, dated 17.04.2015. Via this order, the petitioner was given liberty to re-export the gold, on payment of

redemption fine of Rs.2,50,000/- along with penalty, in the sum of Rs.60,000/-.

2.3 The petitioner, being aggrieved, preferred an appeal with the Commissioner of Customs (Appeals).

2.4 The Commissioner of Customs (Appeals), vide order dated 24.08.2015, allowed the appeal, partially, by reducing the redemption fine to a sum of Rs.1,50,000/- and the penalty to a sum of Rs.40,000/-.

2.5 Admittedly, against this order, the Revenue has preferred a revision petition.

2.6 I am informed by the learned counsel for the Revenue that the revision petition has not come up for hearing. It is, therefore, obvious that there is no interim order of the Revisional Authority staying the operation of the order-in-appeal passed by the Commissioner of Customs (Appeals).

2.7 It is, in this background, that the instant petition has been filed with the prayer that, since, there is no order of a Superior Authority staying the operation of the order of the Commissioner of Customs (Appeals), the said order should be implemented.

3. During the course of arguments, it has got revealed that one of the reasons that the Revisional Authority is not able to take up the proceedings for hearing, is that, as presently constituted, the said authority holds a rank, which is equivalent to the post of Commissioner of Customs (Appeals).

4. The Revenue, I am told, has proposed to confer the power of revision, on an officer, who holds a rank, higher than that

which is held by the Commissioner of Customs (Appeals). This move is envisaged, in view of the decision of the Punjab and Haryana High Court : NVR Forgings V.Union of India - 2016 (335) ELT 679 (P &H).

5. Via the said judgment, the Punjab and Haryana High Court has ruled that since the rank of the Revisional Authority and that of the Appellate Authority was the same, the order passed by the Revisional Authority, could not be sustained. The observations made by the Court in paragraphs 8 and 9 of the judgment, being relevant, are set forth below for the sake of convenience:

> "...8. 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. Adverting to the judgments relied upon by the learned counsel for the respondents, it amy be noticed that the said decisions were based on individual fact situation involved therein. Thus, the respondents cannot derive any advantage from the said pronouncements.
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> 9. In view of the above, the petitions are allowed. The impugned order dated 28-8-2015, Annexure P.8 in CWP No. 24967 of 2015 and order dated 16-9-2015, Annexure P.5 in CWP No. 26321 of 2015 are set aside. However, liberty is granted to the State to proceed afresh in accordance with law but without prejudice to the rights of the parties."

5.1 Pertinently, the Special Leave Petition preferred against the aforementioned judgment of the Punjab and Haryana High Court was dismissed in limine vide order dated 17.10.2016. The Special Leave Petition was numbered as: SLP (CC) No. 19063 of 2016.

6. Having regard to the aforesaid circumstances and the submission made by the counsel for the respondents that the rank of the Revisional Authority would be upgraded to a level higher than that of the Commissioner of Customs (Appeals), I am inclined to dispose of the present writ petition

with the following directions:

6.1. The petitioner will deposit a sum of Rs.1,90,000/- towards redemption fine and penalty, as quantified by the order-in-Appeal dated 24.08.2015.

6.2. The difference between the amount calculated towards redemption fine and penalty, in the order-in-original and in the order-in- Appeal, which is a sum equivalent to Rs.1,20,000/-, will be secured by the petitioner, by furnishing a certificate of a Nationalised Bank. The Certificate will state, in no uncertain terms, that at no given point in time, the balance in the account of the petitioner, shall be allowed to fall below a sum of Rs.1,20,000/-.

6.3 Furthermore, the certificate would hold out that in case, the petitioner is unsuccessful in the pending revisional proceedings, then, the said sum would be made available, wholly or in part, as may be ordered, towards recovery of redemption fine and penalty, imposed by the concerned authority.

6.4. The petitioner will also furnish a personal bond, to the satisfaction of the concerned authority, for the remaining value of the subject goods, i.e, gold.

6.5. Upon fulfilment of the conditions, as stipulated in paragraph Nos. 6.1 to 6.4 above, the respondents will allow the petitioner to re-export the subject goods i.e, gold.

7. Needless to say, before accepting the Bank Certificate, the concerned authority will ascertain its veracity by making requisite enquiries.

8. The entire exercise will be completed by the respondents, with due expedition, though, not later than four (4) weeks from the date of receipt of a copy of this order.

9. With the aforesaid observations, the writ petition is disposed of. However, there will be no order as to costs. Consequently, connected W.M.P. is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Commissioner of Customs,
   Chennai - I (Airport),
   O/o. The Principal Commissioner of
   Customs, Commissionerate,
   New Customs House,
   Meenambakkam,
   Chennai - 600 027.

2. The Assistant Commissioner of
   Customs (Airport),
   Anna International Airport,
   Meenambakkam,
   Chennai - 600 027.

+1cc to Mr.Senthil kumar, Advocate, S.R.No.1252

PVS(CO)
RS(06/02/2017)

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