IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.08.2017

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.35835 of 2004

M.Arokiaraj ... Petitioner

Vs.

1. The Additional Commissioner of Customs,
   Airport & Air Cargo Commissionerate,
   Air Cargo Complex, Meenambakkam,
   Chennai - 600 027.

2. The Commissioner of Customs (Appeals),
   Custom House, No.60, Rajaji Salai,
   Chennai - 600 001.

3. Union of India, Rep. by
   The Joint Secretary to the Government
   of India, Revision Application,
   Ministry of Finance, Department of Revenue,
   4th Floor, Jeevan Deep Building,
   Sansad Marg (Parliament Street),
   New Delhi - 110 001. ... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the first respondent-the Additional Commissioner of Customs,Airport & Air Cargo Commissionerate, Chennai, in Order-in-Original No.23/2003, dated 29.09.2003 has modified by the second respondent-the Commissioner of Customs (Appeals), Chennai, in Order-in-Appeal No.C4/647/0/2003-Air & C.Cus.No.815/03, dated 31.12.2003 and confirmed by the third respondent-the Joint Secretary (Revision Application), New Delhi, in order No.322/04, dated 12.07.2004 in Revision Application F.No.373/49/B/2004-RA and quash the same.

For Petitioner : Mr.A.K.Jayaraj

For Respondents : Mr.G.M.Syed Norullah Sheriff,
Senior Panel Counsel

O R D E R

Heard Mr.A.K.Jayaraj, learned counsel for the petitioner and Mr.G.M.Syed Norullah Sheriff, learned Senior Panel Counsel for the respondents.

2.The petitioner is aggrieved by an order passed by the first respondent - the Additional Commissioner of Customs, Chennai dated 29.09.2003, modified in appeal by order of the second respondent dated 31.12.2003 and confirmed in revision by the third respondent by order dated 12.07.2004. Under normal circumstances, the Court cannot sit in judgment over the factual findings recorded by the two fact finding authorities viz., the original authority and the appellate authority and on the finding of the revisional authority rendered after re-appreciation of the facts.

3.However, the case on hand is an exception. Show cause notice was issued to the petitioner and one Mr.Durai Srinivasan calling upon them to show cause as to why the seized 36.073 kgs of cultured pearls, consumer goods and cellphone accessories of foreign origin in trade quantity totally valued at Rs.9,60,430/- smuggled into India in contravention of the provisions of Section 77 and 79 of the Customs Act, read with 2(39) of the Customs Act, 1962 and para 2.20 of Exim Policy 2002-2007 should not confiscated under Section 111(d), (i) (l) and (m) of the Act and as to why penalty should not be imposed on both of them under Section 112(a) of the Act. The baggage from which the goods were seized was an unaccompanied baggage. The fact that the petitioner did not travel to the country from which the goods originated is not disputed. In other words there was no proof to show that the petitioner had travelled to Hong Kong and the passport did not contain any such endorsement.

4.The only allegation against the petitioner is that he had given his passport to one Mr.Durai Srinivasan for clearing the consignments and therefore, the respondent would state that the petitioner would have had the knowledge of the contents of the baggage. When show cause notice was issued, the petitioner submitted a detailed reply denying the entire allegation and stated that he had not filed or signed any baggage declaration, he did not know the contents of the baggage, he is not the owner of the goods, but appears to have stated before the authorities that his passport was given to Mr.Durai Srinivasan.

5.The matter was adjudicated and the adjudicating authority rejected the petitioner's contention and ordered confiscation of the goods with an option to redeem on payment of redemption fine of Rs.3,00,000/- and also imposed penalty of Rs.1,00,000/- on the petitioner. So far as Mr.Durai Srinivasan is concerned, since he was not traceable and he did not respond to the intimation given by the Department, proceedings against him were kept in abeyance.

6.The petitioner preferred an appeal before the second respondent who has modified the order which was confirmed by the third respondent on revision.

7.What is important to note is that the original authority while imposing penalty on the petitioner vide its order dated 29.09.2003 did not specifically render a finding as to how he connects the petitioner with the tainted consignments. This is required because charge against the petitioner is criminal in nature (i.e.,) charge of smuggling when admittedly it was an unaccompanied baggage. There should be a clear finding to show that the petitioner, with full knowledge, had filed baggage declaration and used his passport for clearing the goods. Then only, responsibility can be fixed on the petitioner, more so, when personal penalty is levied.

8.However, no such finding has been rendered by the original authority. This aspect of the matter was not dealt with by the Appellate Authority, but he reduced the penalty to Rs.50,000/-. The Revisional Authority did not reduce the penalty, but dismissed the revision application. While taking note of the grounds of the revision, the Revisional Authority viz., the third respondent, has noted that in the show cause notice, statement of one T.P.Rajmohan, customs clearing clerk of M/s. Madura Impex services, was referred to, in which he had stated that the baggage in question belongs to Mr.Durai Srinivasan. In such circumstances, it cannot be conclusively held that the petitioner had knowledge that the baggage contained tainted goods. Admittedly, there is no statement recorded from Durai Srinivasan, who was evading summons. Thus, the finding against the petitioner is based on presumption, as admittedly there was no direct evidence to show that the petitioner had knowledge of the contents of the baggage and goods were being smuggled into India. Therefore, the imposition of penalty on the petitioner alone and allowing the other person viz., Durai Srinivasan to go scot-free is not sustainable.

The writ petition is allowed accordingly and the impugned orders are set aside. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

abr

To

1. The Additional Commissioner of Customs,
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   Air Cargo Complex, Meenambakkam,
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   Sansad Marg (Parliament Street),
   New Delhi - 110 001.

+1cc to Mr.A.K.Jayaraj, Advocate, S.R.No.58002
+1cc to Mr.G.M.Syed Norullah Sheriff, Advocate, S.R.No.58125

W.P.No.35835 of 2004

CS IV
CA(08/09/2017)