IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.07.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.36132 of 2004

R.Dineshkumar ... Petitioner

Vs.

1. The Assistant Collector of Customs,
   Prosecution Cell,
   Customs House, Chennai - 1.

2. The Assistant Collector of Customs (R&I),
   Customs House, Chennai - 1. ... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India praying to issue Writ of mandamus to direct the respondents to pay the value of sale proceeds of seized goods of 285 packets of Zip Fasteners and 11 packets of Rubber bands being Rs.1,35,000/- together with interest @ 18% per annum from the date of seizure i.e. 27.08.1987 and pass such further orders.

For Petitioner : Mr.P.Muthupandiarajan

For Respondents : Mr.G.M.Syed Nurullah Sheriff

ORDER

Heard Mr.P.Muthupandiarajan, learned counsel for the petitioner and Mr.G.M.Syed Nurullah Shereiff, learned standing counsel for the respondents.

2. The petitioner has filed this writ petition praying for issuance of a writ of mandamus to direct the respondents to pay the value of sale proceeds of seized goods of 285 packets of Zip Fasteners and 11 packets of Rubber bands being Rs.1,35,000/- together with interest @ 18% per annum from the date of seizure i.e. 27.08.1987.

3. The above mentioned materials were seized from the petitioner on the allegation that they were smuggled. Based on the same, prosecution was launched against the petitioner before the Additional Chief Metropolitan Magistrate Court, Egmore,

Chennai, in E.O.C.C.No.490/89 under Section 135 of the Customs Act. The case ended in acquittal by judgment dated 17.05.1993, wherein the Court, after acquitting the petitioner of the charge, directed the respondent to handover the seized materials or pay the sale proceeds of the same. The respondent preferred a revision as against the said order in Crl.R.C.No.554 of 1993 contending that while passing the order of acquittal, the trial Court directed the prosecution to handover the seized materials or pay the sale proceeds and such direction could not have been issued as the material objects seized from the accused cannot be directed to be returned to him, since the same had been confiscated as per the proceedings under the Customs Act. This contention raised by the respondent was examined by this Court and it was held that it lacks in substance, inasmuch as the properties seized in this case were the subject matter of the offence in respect of which the petitioner/accused was facing trial. Ultimately, by order dated 22.01.2002, the said Criminal Revision Case was dismissed. At this stage, it would be beneficial to refer to the operative portions of the order, which are quoted below:-

> "5. On careful analysis of the materials, the trial Court found that Ex.P-3, the alleged confession statement obtained from the accused, was not a voluntary one and the same was extracted after subjecting him to torture and the materials produced by the accused through the witnesses and the documents would show that the articles seized from him were purchased by him lawfully and acquitted the accused. While passing the order acquitting the accused, the trial Court directed the prosecution to hand over the seized zip fasteners and rubber bands or the sale proceeds of the same to the accused.
>
> 6. As noted above, even though the finding with regard to the acquittal was not challenged, it is contended that the materials objects seized form the accused cannot be directed to be returned to him, since the same had been confiscated as per the proceedings under the Customs Act.
>
> 7. This contention, in my view, lacks substance, inasmuch as the properties seized in this case are the subject matter of the offence in respect of which the accused was facing trial.
>
> 8. Once it is found by the trial Court after full fledged trial that the respondent/accused would be entitled to the legal possession of the properties in

question, the accused would be entitled for the return of the same, particularly, when the trial Court held that the prosecution failed to establish its case, whereas the accused proved his defence plea through acceptable materials.

9. Even though during the course of trial, the seizure of the properties were reported to the trial Court, after obtaining permission from the Court, some properties were sold, as they were subject to speedy decay and the other properties in pursuance of the order of the Collector of Customs were sold in public auction.

10. Under those circumstances, it cannot be contended that the trial Court would not be empowered to pass an order with regard to the disposal of the properties which were seized and reported to the Court. In view of the above, the respondent would be entitled to the return of the sale proceeds of the properties sold during the course of trial, as directed by the trial Court.

11. Therefore, I do not find any valid ground in this revision, as it is liable to be dismissed as devoid of merits and accordingly, the Criminal Revision Case is dismissed."

4. It is relevant to point out that the Criminal Revision Case filed by the respondent was only with regard to the direction issued by the trial Court to return the seized materials and not against the order of acquittal. Therefore, it is the submission of the petitioner that the finding rendered by the Court in the above referred Criminal Revision Case is binding on the respondent and they have to return the value of the seized goods.

5. After the dismissal of the above Criminal Revision Case, the petitioner, through his counsel, sent a notice dated 27.03.2002 demanding the payment of sale proceeds along with interest. This was received by the office of the respondent on 01.04.2002 as evidenced by the office seal affixed in the representation. This was followed by reminder dated 24.08.2004 sent by the registered post, which has been received by the office of the respondent on 26.08.2004 as seen from the postal acknowledgment. Since no action has been taken, the petitioner has filed this writ petition in the year 2004.

6. Though notice has been served, no counter affidavit has been filed by the respondents till date. Considering the fact that the writ petition is of the year 2004, no useful purpose would be served in keeping the matter pending for filing counter affidavit. Therefore, following directions are issued to meet the ends of justice;

(i) the petitioner is directed to submit a fresh representation along with copies of the earlier representations and a copy of this order to the respondents within a period of three weeks from the date of receipt of a copy of this order;

(ii) on receipt of such representation, the competent authority / respondent is directed to pass a speaking order on merits and in accordance with law, within a period of three weeks thereafter;

(iii) if any clarification is required from the petitioner, the petitioner shall be directed to be present and permitted to appear through authorized representative.

7. In fine, with the above directions, the writ petition is disposed of. No Costs.

Sd/-
Deputy Registrar (Judicial)

/true copy/

Sub Asst. Registrar

rkm

To

1. The Assistant Collector of Customs,
Prosecution Cell,
Customs House, Chennai - 1.

2. The Assistant Collector of Customs (R&I),
Customs House, Chennai - 1.

+1cc to Mr.T.Rajamohan, Advocate Sr. 51316

W.P.No.36132 of 2004

GO(CO)
VR(18/8/2017)