

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.04.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.5148 of 2018

&

W.M.P.Nos.6319 and 6320 of 2018

Mrs.Barakathnisa

... Petitioner

vs

1.The Principal Commissioner of Customs
Chennai- 1 Commissionerate
Air Intelligence Unit
Anna International Terminal, Chennai Airport
Chennai - 600 027

2.The Assistant /Deputy Commissioner of Customs
Air Intelligence Unit
Anna International Terminal, Chennai Airport
Chennai - 600 027

3.The Superintendent of Customs
Air Intelligence Unit
Anna International Terminal, Chennai Airport
Chennai - 600 027

... Respondents

Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records of the records relating to the Seizure Memo made by the 3rd respondent herein in O.S.No.16/2018-AIU 'C' dated 19.01.2018 and quash the same as illegal and consequently direct the 3rd respondent herein to release and return the one Cold Chain and one Gold Bracelet, weighing 379 grams, covered by O.S.16/2018 - AIC 'C'.

For Petitioner : Mr.A.K.Jayaraj

For Respondents : Mr.Aparna Nandakumar

O R D E R

Heard Mr.A.K.Jayaraj, learned counsel for the petitioner and Ms.Aparna Nandakumar, learned standing counsel appearing for the respondent.

2. The petitioner, who is an Indian national, was travelling from Bangkok and when she landed in Chennai Airport, it appears that the customs officials made a check of her baggage and found nothing incriminating was in the baggage and there was no concealment. However, the authorities would state that the petitioner had worn a burka and underneath she has concealed a Gold Chain and one yellow colour metal bracelet, which have been certified to be of 24 Carrate gold weighing 379 gram. A recognized goldsmith has valued the gold at Rs.11,44,201/-.

3. In the mahazar, the respondent Department has noted the statement given by the petitioner, who had stated that someone unknown to her has given them for being delivered to somebody else at the Chennai Airport. Subsequently, the petitioner has retracted the said statement. In any event, the investigation is in the process and after completion of which the respondent will issue show-cause notice. In the meantime, the petitioner seeks to quash the Seizure notice and seeks for release of the gold chain and bracelet. In my considered view, the question of quashing a Seizure mahazar does not arise and that being a document, which records as to what took place in the Chennai airport on 19.01.2018, cannot be quashed by way of a writ petition. However, considering the fact that the petitioner is an Indian National and her husband is stated to be working in Bangkok for more than 11 years and has a valid Indian passport and the gold, not being a prohibited item, this court is of the view that Gold jewellery can be directed to be provisionally released by the respondent.

4. More or less identical issue arose for consideration in W.P.No.1421 of 2011 wherein the assorted gold jewellery were seized and the Court ordered provisional release of the gold jewellery on certain conditions against which the Department preferred appeal in W.A.No.582 of 2011, which was disposed of by modifying the order passed in the writ petition by directing the writ petitioner therein to deposit 50% of the duty for the value of the gold jewellery and on such deposit being made, the gold jewellery in question was directed to be released forthwith. In my considered view, similar direction could be issued in this case also, as the said order could protect the interest of revenue as well.

5. In view of the above, while rejecting the prayer sought for by the petitioner for quashing the seizer mahazar, there will be a direction to the third respondent to release the gold jewellery to the petitioner subject to payment of 50% of the duty as computed by the third respondent. For the remaining amount, the petitioner is directed to file a personal bond and keep the bond alive till the adjudication process is over. The

third respondent shall compute the duty payable and issue a notice to the petitioner and upon remittance of the 50% of the duty determined by the third respondent, the third respondent shall release the Gold jewelry within one week thereafter. The petitioner should give an undertaking that she will not sell or mortgage or part away with the gold jewelry till the adjudication process is completed and the petitioner should extend her cooperation to the adjudication proceedings as and when the show-cause notice is issued.

The writ petition is disposed of with the above direction. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

gpa

To

- 1.The Principal Commissioner of Customs
Chennai- 1 Commissionerate
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- 3.The Superintendent of Customs
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+1cc to Mr.A.K.Jayaraj, Advocate, S.R.No.29790

+1cc to M/s.Aparna Nandakumar, Advocate, S.R.No.29733

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RRK (27/04/2018)