IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.01.2018

Coram

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

Writ Petition No.28999 of 2010

Chellapalam Manivannan ...Petitioner

Vs.

1.The Joint Secretary to the Government of India,
(Revision Application)
Ministry of Finance (Department of Revenue),
14, Hudco Vishala Building, B-Wing,
6th Floor, Bhikaji Cama Place,
New Delhi - 110 066.

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

3. The Joint Commissioner of Customs (Adjn.-Air),
Custom House, No.60, Rajaji Salai,
Chennai 600 001. ...Respondents

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus, calling for the records of the first respondent, the Joint Secretary to the Government of India (Revision Application), Ministry of Finance (Department of Revenue), New Delhi, in Order No.163/10-CUS, dated 15.04.2010, in Revision Application F.No.373/174/B/08-RA-CUS, confirming the order of the second respondent, the Commissioner of Customs (Appeals), Custom House, Chennai, in Order-in-Appeal No.C.CUS/365/2008, dated 25.09.2008, in Appeal No.C4/807/0/2007-Air, and to quash the same and to pass an order of direction, directing to release the redemption fine of Rs.1,85,000/- and penalty of Rs.1,50,000/- paid by the petitioner.

For Petitioner : Mr.A.K.Jayaraj

For Respondents : Mrs.D.S.Seethalakshmi
Senior Standing Counsel

ORDER

Heard Mr.A.K.Jayaraj, the learned counsel appearing for the petitioner and Mrs.D.S.Seethalakshmi, the learned Senior Standing Counsel for the respondents.

2. The petitioner has filed this Writ Petition, challenging the order passed by the first respondent, exercising his powers under Section 129 DD (1) of the Customs Act, 1962, (hereinafter, referred to as the Act), by which, first respondent affirmed the order passed by the second respondent, who had confirmed the order passed by the third respondent, dated 03.10.2007. By the said order, the third respondent ordered confiscation of the Indian currency of Rs.14,00,000/-, under Section 113 (d) of the Act read with Foreign Exchange Management (Export and Import of Currency) Regulations, 2000, framed under the Foreign Exchange Management Act (FEMA) 1999, with an option to the petitioner, to redeem the said currency on payment of a fine of Rs.3,50,000/-, and imposition of penalty of Rs.1,50,000/-. Though the first and second respondents have confirmed the findings given by the third respondent, the second respondent has granted a partial relief to the petitioner, by reducing the redemption fine from Rs.3,50,000/- to Rs.1,85,000/-. However, the factual findings rendered by the third respondent have been confirmed.

3. The learned counsel appearing for the petitioner would submit that, Section 113 (d) of the Act, could not have been invoked, as there is no prohibition imposed under the Act, or any other law, to take the Indian currency outside the Country.

4. I am not persuaded to accept the submission of the learned counsel appearing for the petitioner, for the reason that, Section 2 (22) (d) of the Act, defines “goods”, includes currency and negotiable instruments, and Section 2 (33) defines “prohibited goods” which means any goods, import or export of which, is subject to any prohibition under this Act or any other law, for the time being in force, but does not include any such goods, in respect of which, the conditions subject to which, the goods are permitted to be imported or exported have been complied with.

5. The contention of the petitioner is that, the first respondent, in the impugned order has accepted that, there is no prohibition to take Indian currency outside the Country, but, it is only a restrain. Further, it was argued that the Indian currency did not cross the customs barrier, and before that, it was seized, and therefore, the question of invoking Section 113

does not arise.

6. It is settled legal principle that the term ''prohibition'' shall include ''restrain''. Section 2 (33) of the Act defines the term “prohibited goods” to mean any goods, which is not only prohibited under the Act, or prohibition under any other law, which is in force.

7. Admittedly, there is a prohibition for taking Indian currency outside the Country, as per the Regulations framed under the FEMA. Therefore, a person intending to take currency outside the India beyond the threshold limit of Rs.5,000/- is required to obtain prior permission. Admittedly, the petitioner did not obtain such prior permission before carrying Indian currency to the tune of Rs.14,00,000/-. In such circumstances, Section 113 of the Act could be invoked, as the said provision deals with confiscation of goods attempted to be improperly exported. The respondents have concurrently found that the petitioner attempted to improperly export the Indian Currency to the tune of Rs.14,00,000/- out side the Country, without permission.

8. Thus, the currencies, which were seized from the petitioner and confiscated by the order passed by the third respondent are undoubtedly prohibited goods, and the power exercised by the third respondent is valid and proper. That apart, this Court, exercising its jurisdiction under Article 226 of the Constitution of India, would not re-examine the factual position, as it has been appreciated by the second respondent/Appellate Authority and re-appreciated by the first respondent/Revisional Authority. Therefore, the scope of interference, in such orders, being very limited, and the Court, having found that the petitioner has not made out any case, is not inclined to entertain the challenge to the impugned orders, on the grounds raised by the petitioner.

9. For the above reasons, this Writ Petition fails and accordingly, it is dismissed. No costs.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

dna/sd

To

1.The Joint Secretary to the Government of India,
(Revision Application)
Ministry of Finance (Department of Revenue),
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Chennai 600 001.

+1CC to Dr.S.Seethalakshmi, Advocate (SR No.641)

+1CC to Mr.A.K.Jayaraj, Advocate (SR No.426)

ah (03/02/2018)

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