



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated :29.10.2018

CORAM

WEB COPY

**THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
AND
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI**

W.A(MD)No.1478 of 2018 and
C.M.P(MD)No.10551 of 2018

1. The Commissioner of Customs,
No.1, Williams Road,
Cantonment, Trichy - 620 001.
2. The Assistant Commissioner of Customs,
Air Intelligence Unit,
Trichy Airport, Trichy - 620 007.
3. The Superintendent of Customs,
Air Intelligence Unit,
Trichy Airport, Trichy - 620 007. ... Appellants/Petitioners

Vs.

Hasina Balkis

... Respondent/Petitioner

Prayer : Writ Appeal is filed under Clause 15 of the Letters Patent, to set aside the order dated 21.02.2018 made in W.P(MD)No.3124 of 2018.

Prayer in WP(MD)No.3124 of 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records relating to the seizure order made by the 3rd respondent herein in OR No.22/2018-AIU, Trichy dated 29/01/2018 insofar as the petitioner is concerned and quash the same as illegal and consequently direct the 3rd respondent herein to release and return the Gold Chain and two Gold Bangles covered by OR No.22/2018-AIU, Trichy, to the petitioner in WP(MD)No.3124 of 2018.

For Appellants : Mr.B.Vijay Karthikeyan
For Respondent : Mr.A.K.Jayaraj

JUDGMENT

**[Judgment of the Court was delivered by
PUSHPA SATHYANARAYANA, J.]**

The writ appeal is directed against the order dated 21.02.2018 passed by the learned single Judge in W.P(MD)No.3124 of 2018.



2. The writ petition was filed by the respondent / writ petitioner for quashing the seizure order made by the third appellant in OR.No.22/2018-AIU, Trichy dated 29.01.2018 insofar as the writ petitioner was concerned and direct the third appellant to return the one gold chain and two gold bangles covered by the said order.

3. The learned single Judge following the order passed in W.A.No.582 of 2011 dated 01.04.2011 directed the writ petitioner / respondent to deposit 50% of the duty for the value of the seized items and directed the appellants to release the seized items on such deposit being made.

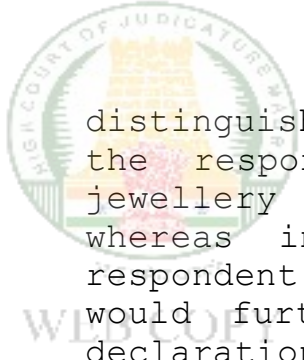
4. Aggrieved by the said order, the present writ appeal has been filed by the appellants.

5. It is submitted by the learned counsel for the appellants that admittedly the respondent had stayed overseas only for a period less than six months and therefore, she is not entitled to carry gold weighing 152.500 gms. According to them, she had attempted to smuggle 24 ct. gold unfinished gold chain and two unfinished gold bangles. It is further contented that the respondent had violated the Baggage Rules 2016.

6. He would further submit that the allowance for jewellery in terms of Rule 5 of the Baggage Rules, 2016, is that a person residing abroad for more than one year, on return to India, shall be allowed clearance free of duty in his *bona fide* baggage of jewellery up to a weight of 20 grams with a value cap of Rs.50,000/-, if brought by a gentleman, 40 grams with a value cap of Rs.1,00,000/-, if it is brought by a lady passenger. As the respondent arrived carrying one unfinished gold chain and two unfinished gold bangles and the value was Rs.4,64,057/-, the authorities had to intercept. It is his further case that the respondent attempted to exit the customs area of the airport through green channel which is meant for passengers who have no dutiable items to declare.

7. The learned single Judge passed the order following the order passed in W.A.No.582 of 2011, directing the writ petitioner / respondent to pay 50% of the duty and on such payment directing the appellants to release the seized items forthwith. It is also further stated that it was open to the authorities to initiate appropriate action in accordance with Section 124 of the Customs Act, 1962. The said order was passed in February, 2018. Admittedly, no progress in the proceedings has been shown. Though the release of the seized items was directed to be given forthwith on deposit of the sum, the said order is also not

8. The learned counsel for the appellants attempted to



distinguish the order passed in W.A.No.581 of 2011 stating that the respondent therein carrying 350 grams of assorted gold jewellery and he was staying abroad for more than six months whereas in the case on hand, admittedly, the trip of the respondent to overseas was for a period less than six months. He would further contend that the respondent had signed in the declaration that the said gold did not belong to her and it was carried for somebody else and therefore, it is an act of smuggling.

9. He placed reliance on a decision of the Division Bench of Kerala High Court reported in 2012 (275) E.L.T. 300 (Ker.), which is confirmed by the Hon'ble Supreme Court. The said decision was pressed into service for the purpose that gold as such, is a prohibited item and the same could not be released on payment of redemption fine and duty, if the person carried it for somebody else.

10. In reply, the learned counsel for the respondent cited various authorities of this Court and stated that it is only the release of the seized goods ordered whereas, the proceedings under Section 124 had to go on. Admittedly, the authorities have not proceeded with the enquiry in this regard. In the event, the respondent is found guilty, it is always open to the authorities to proceed in the manner known to law. Though in the writ petition quashing of the seizure order was sought, the learned single Judge, has only directed the return of the gold seized. It is for the Department to proceed with the show cause notice and any reply filed by the respondent to be considered. When it is open to the authorities to proceed in the manner known to law, the appeal filed by them is unwarranted and the same does not merit any consideration and it is dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-I)

/True Copy/

Sub Assistant Registrar (CS-II)

+ 1 CC TO Mr.B.VIJAY KARTHIKEYAN, ADVOCATE IN SR No. 92534

+ 1 CC TO Mr.A.K.JEYARAJ, ADVOCATE IN SR No. 92670

PM

TE/SV/SAR-2 : 23/11/2018 : 3P/3C