IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.06.2019

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THE HONOURABLE MR. JUSTICE M.SUNDAR

W.P.Nos.10062, 10065 and 10070 of 2019

Mr.Abdul Rehman Darji ... Petitioner in WP.No.10062 of 2019

Mr.Shaik Basha ... Petitioner in WP.No.10065 of 2019

Mr. Shaik Shameer ... Petitioner in WP.No.10070 of 2019

(All the three Petitioners rep by their Power of Attorney Agent Shaik Mohammed Ali)

vs.

1. The Commissioner of Customs, (Airport),
   O/o. The Principal Commissioner of
   Customs Commissionerate,
   New Customs House,
   Meenambakkam, Chennai - 600 027.

2. The Assistant Commissioner of Customs, (Airport)
   Anna International Airport,
   Meenambakkam, Chennai - 600 027.

3. The Commissioner of Customs (Appeal)
   No.60, Rajaji Salai,
   Custom House, Chennai - 600 001. ... Respondents in all W.Ps.

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the respondents to implement the order passed by the Commissioner (Appeals), Chennai in Order-in-Appeal Nos.C. Cus.I No.01/2018 dated 22.01.2018, C.Cus-I No.220/2017 -Air dated 29.12.2017 and C.Cus-I No.216/2017 -Air dated 29.12.2017 respectively and thus render justice.

For Petitioner : Mr.T.Chezhian

(In all W.Ps)

For Respondents : Mr. RajkumarJhabakh
(In all W.Ps)
Standing counsel

COMMON ORDER

This common order will dispose of these three writ petitions.

2. Mr.T.Chezhian, learned counsel on record for the writ petitioners in all the writ petitions and Mr.Rajkumar Jhabakh, learned standing counsel for Customs on behalf of respondents 1 and 2 are before this Court.

3. To be noted, respondent No.3 is Commissioner of Customs (Appeals), whose order made in exercise of appellate jurisdiction is being sought to be implemented or in other words, a Mandamus is sought more particularly against respondents 1 and 2 to implement the order made by the 3rd respondent Commissioner of Customs (Appeals), which has been made in exercise of the appellate authority jurisdiction vested with the 3rd respondent.

4. Though, several points have been raised in the affidavits filed in support of the instant writ petitions, learned counsel for writ petitioners abridged the submissions and submitted that in the light of the stated position/stand which all the three writ petitioners are taking, these matters turn on an extremely narrow compass.

5. Therefore, short facts shorn of unnecessary and elaborate particulars/details will suffice. To be noted, there are three different writ petitioners in each of these writ petitions.

6. The commonality is that the three writ petitioners came into India from different countries abroad, they were intercepted by Customs Officers at the arrival Airport and certain consignments were seized from them, which according to the Customs Department are contraband.

7. This led to initiation of proceedings against each of the writ petitioners and the original authority i.e., Joint Commissioner of Customs (Adjudication-Air) passed three separate orders inter alia ordering confiscation of the goods seized

(option for redemption was given with regard to some part of the consignment). Besides this, two sets of penalties i.e., one under Section 112(a) of 'The Customs Act, 1962' (hereinafter 'said Act' for brevity) and another under Section 114 AA of said Act were imposed.

8. The writ petitioners carried the matter in appeals to the appellate authority i.e., third respondent. After adjudication, the third respondent passed separate orders in appeals, wherein and whereby the Appellate Authority reduced the redemption fine and set aside the penalty under Section 114 AA of said Act alone. In other words, penalty imposed under Section 112 (a) of said Act was confirmed.

9. Against the aforesaid order of the third respondent, the Customs Department has filed revisions to the Revisional Authority. It is submitted by both sides that Officer of the Revisional Authority is now vacant and it will take a while for the revisions to be heard.

10. Be that as it may, it is not in dispute that the revisions preferred by the Customs Department are only with regard to one limb of the order of the third respondent viz., deletion of the penalty imposed under Section 114 AA of said Act. As already alluded to supra, the Appellate Authority has confirmed the other penalty imposed under Section 112 (a) of said Act.

11. Under the aforesaid circumstances, owing to pendency of the limited revisions before the Revisional Authority preferred by the Customs Department, the redemption which the writ petitioners are entitled to pursuant to orders of the third respondent (Appellate Authority) are stalled.

12. In the aforesaid backdrop, learned counsel for writ petitioners, on instructions, submitted that each of the writ petitioners will pay the penalty imposed under Section 114 AA of said Act within a week from the date of receipt of a copy of this order. If the penalty imposed under Section 114 AA of said Act(subsequently deleted by the appellate authority) is now paid by each of the writ petitioners, nothing will survive in the revision petitions filed by the Customs Department.

13. However, it is submitted that the question as to whether Section 114 AA of said Act can be invoked at all is to be decided, is learned counsel's say.

14.Be that as it may, as far as Revenue implication is concerned, if the penalty imposed under Section 114 AA of said Act is paid within one week from the date of receipt of a copy of this order, there will be no impediment in the order of the Appellate Authority being given effect to. In other words, there will be no impediment in redemption i.e., implementation of the order made by the third respondent viz., Appellate Authority.

15. Therefore, this Court passes the following order:

a) Penalty imposed by the Original Authority under Section 114 AA and deleted by the Appellate Authority (third respondent) which is the sole issue in the revisions shall be paid by the writ petitioner to the Customs Department within one week from the date of receipt of a copy of this order.

b) Thereafter, i.e., on payment of penalty imposed by Original Authority under Section 114 AA of said Act, respondents 1 and 2, more particularly, respondent No.2 shall implement (notwithstanding pendency of Revision) the order of the third respondent made in appeals i.e., by permitting redemption on payment of redemption fine as reduced by the Appellate Authority within a fortnight there from.

c) The question as to whether the revisions will be withdrawn by the Customs Department from the file of the Revisional Authority or whether the same will be continued to its logical end to decide the question as to whether 114 AA is attracted in such cases is left open.

d) As the aforesaid point is left open, if the revisions are carried to its logical end, if they are dismissed and if they are given quietus, obviously, the writ petitioners are entitled to refund.

All the three writ petitions are disposed of with the aforesaid directions. There shall be no order as to costs.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

1. The Commissioner of Customs, (Airport),
   O/o. The Principal Commissioner of
   Customs Commissionerate,
   New Customs House,
   Meenambakkam, Chennai - 600 027.

2. The Assistant Commissioner of Customs, (Airport)
   Anna International Airport,
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3. The Commissioner of Customs (Appeal)
   No.60, Rajaji Salai,
   Custom House, Chennai - 600 001.

+1 CC to Mr.T.Chezhian, Advocate sr 48171.
+1 CC to Mr.P. Rajkumar, Advocate sr 48219.

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and 10070 of 2019

BP(CO)
SP(01/08/2019)