IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE:24.06.2019

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.17381 of 2019

Umar Syed .. Petitioner

Vs.

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

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

3. The Assistant Commissioner of Customs (Disposal)
   O/o.The Principal Commissioner of Customs
   New Customs House, Meenambakkam
   Chennai- 600 027

4. The Assistant Commissioner of Customs (Refunds)
   O/o.The Principal Commissioner of Customs
   New Customs House, Meenambakkam
   Chennai- 600 027 .. Respondents

Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Mandamus directing the 1st respondent to forthwith implement the Order-in-Original No.269/2018-19 dated 15.02.2019 or directing the first and fourth respondents to refund the sum of Rs.2,28,21,820/- which being the sale proceeds after deducting the penalty.

For Petitioner : Mr.T.Chezhiyan

For Respondent : Mr.M.Santhanaraman
Senior Standing Counsel for Customs

O R D E R

Mr.T.Chezhiyan, learned counsel on record for writ petitioner is before this Court. Mr.M.Santhanaraman, learned senior standing counsel on behalf of all the four official respondents is before this Court.

2.With the consent of learned counsel on both sides, the main writ petition is taken up, heard out and is being disposed of.

3.The writ petitioner arrived at Hyderabad airport from Dubai on 19.04.2018 and dutiable goods being gold/gold jewellery were seized from the writ petitioner.

4.Considering the narrow scope on which the instant writ petition now turns, it may not be necessary to advert to details of seizure with elaboration.

5.Suffice to say that seizure culminated in an order dated 15.02.2019 made by the Customs Department. Vide this order, confiscation from the writ petitioner was ordered, writ petitioner was given the option to redeem the consignment for re-export on payment of Rs.70,00,000/- (Rupees Seventy Lakhs only) inter alia under Section 125 of 'Customs Act,. 1962' ('said Act' for brevity). Besides this confiscation and redemption option, a penalty of Rs. 20,00,000/- (Rupees Twenty Lakhs only) was also imposed on the writ petitioner inter alia under Section 112-A of said Act.

6. There is no dispute or disagreement before this Court that the aforesaid order dated 15.02.2019 has attained finality or in other words, has been given legal quietus.

7.It is the case of the writ petitioner that the writ petitioner approached the respondent for redemption and the respondents vide communication dated 22.04.2019 (third respondent to be precise) informed the writ petitioner that the consignment seized from writ petitioner has since been sold and an amount of Rs.2,48,21,820/- has been realized. Therefore, the redemption option stands foreclosed. What remains now is refund of the value realized.

8. Learned counsel for writ petitioner submits that the writ petitioner would be satisfied if the aforesaid amount realized by the Customs Department is refunded after deducting Rs.20,00,000/- penalty that has been imposed on the writ petitioner.

9. In this regard, an order passed by a Hon'ble Single Judge of this Court being order dated 02.03.2017 in W.M.P.No.5088 of 2017 in W.P.No.32340 of 2016 was adverted to. There is no disputation or disagreement before this Court as between both the learned counsel that the instant case stands covered by the earlier order and there is no disagreement that earlier order made by a Hon'ble single Judge has been given a legal quietus. It has not only been given legal quietus, but has been acted upon and refund after deducting penalty has also been given to the writ petitioner therein pursuant to the earlier order.

10. In the light of the narrative thus far, the following order is passed:

a) Fourth respondent is directed to pay to the writ petitioner money realized by selling the consignment seized from the writ petitioner after deducting the penalty of Rs.20,00,000/- imposed vide order dated 15.02.2019. For the purpose of clarity, it is made clear that the amount realized by the Department by selling the consignment seized from the writ petitioner is Rs.2,48,28,820/- and the penalty is Rs.20,00,000/-. Refund in the aforesaid manner i.e., after deducting penalty shall be made.

b) Writ petitioner shall make an application for refund in tune with this order of this Court within a fortnight from the date of receipt of a copy of this order in accordance with the prevailing applicable Rules.

c) Fourth respondent shall make refund in accordance with this order of this Court within four weeks from the date of receipt of refund application.

This writ petition is disposed of with the above directions. No costs.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

gpa

To

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+1cc to Mr.M.Santhanaraman, Advocate, S.R.No.52094

W.P.No.17381 of 2019

SV(CO)
CS/31/07/2019