

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.10.2019

CORAM :

THE HON'BLE DR.VINEET KOTHARI, ACTING CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE C.SARAVANAN

W.A.Nos.825 and 826 of 2014

The Commissioner of Customs,
Sea Port Import, Customs House,
No.60, Rajaji Salai,
Chennai - 600 001.

.. Appellant/Respondent/Respondent in
both appeals

-vs-

R.Mahaveer Pipada

.. Respondent/Petitioner/Petitioner in
W.A.No.825/2014

M/s.Mundra Jewellers,
M/s.Mundra Bullion Private Limited,
rep. by its Director Ashish Mundra,
No.20, Thulasingham Street,
Sowcarpet,
Chennai - 600 079.

.. Respondent/Petitioner/Petitioner in
W.A.No.826/2014

Writ Appeals filed under Clause 15 of the Letters Patent against the common order dated 29.4.2014 passed in M.P.Nos.3 and 3 of 2014 in W.P.Nos.3856 and 3857 of 2014 on the file of this Court.

MP 3 & 3 of 2014 in WP Nos. 3856 & 3857 of 2014:

Petitions praying that in the circumstances stated therein and in the respective affidavits filed therewith the High Court will be pleased to

i) Pass on interim direction directing the respondent to released the 22 carat Indian made Gold Jewellery weighing 10,011.9 grms and 22 carat Indian made Gold Jewellart weighing 8,452 kgs seized from the petitioner on 19.3.2013 at the Kamaraj Domestic Airport, Chennai and 2,409.1 grams of 22 carat Gold

Jewellery and 4,627.200 grams of Gold Bullion Bars seized on the same day i.e. On 19.3.2013 from the petitioners permises, (in MP.3/14 in WP.3856/2014) and

ii)Pass an interim direction directing the respondent to release 3kgs of gold bullion bars, perth mint, Australia 1 kr each of 9950 quality with serial Nos.2195147, 2195148 and 2195176 seized vide Mahazar dated 19.03.2013 (in Mp./14 in WP.3857/2014) respectively pending WP.Nos.3856 & 3857 of 2014.

For Appellant : Mr.V.Sundareswaran

For Respondent : Mr.V.Govardhanan
in W.A.No.825/2014

For Respondent : Mr.S.Ramesh Kumar
in W.A.No.826/2014

COMMON JUDGMENT

(Delivered by The Hon'ble Acting Chief Justice)

These writ appeals have been filed by the Revenue aggrieved by the interlocutory order dated 29.04.2014 passed in M.P.Nos.3 and 3 of 2014 in W.P.Nos.3856 and 3857 of 2014. By the said order, the learned Single Judge of this Court directed as under:

"25. In the light of the above orders passed by this Court and taking note of the facts of the case on hand, the respondents are directed to release the goods to the custody of the petitioners on the following conditions:

(i)The petitioner shall pay, notwithstanding the alleged payment of duty already made, the entire duty payable by them as may be assessed by the officials of the respondents.

(ii)The petitioners shall execute a personal bond covering the entire value of the goods in question.

(iii)The petitioners shall executed bank guarantee for a total sum of Rs.50,00,000/- (Rupees Fifty Lakhs Only) to the satisfaction of the respondents.

(iv)The petitioners are directed to cooperate

with the respondent in commencing and completing the adjudication proceedings that may be initiated by the respondent.

(v) The petitioners are also directed to produce necessary document as and when they are required to do so by the officials of the respondent.

26. This order is passed in the miscellaneous petitions and it is subject to the outcome of the writ petitions.

27. Accordingly, both the miscellaneous petitions are ordered as prayed for."

2. A Co-ordinate Bench of this Court on 20.06.2017, after hearing both parties, passed the following order in the present appeals:

"1. After some arguments what has transpired is that, insofar as the show cause notice dated 16.09.2013 is concerned, which is the subject matter of the present proceedings, it was served on 19 noticees. Apart from the appellants before us, one of the noticees is : Malabar Diamond Gallery Private Limited.

2. Counsel for the parties informed us that Malabar Diamond Gallery Private Limited had sought provisional release of seized gold by preferring a writ petition.

2.1. The said writ petition was dismissed and that in an appeal carried to the Division Bench, the order was confirmed.

2.2. The order of the Division Bench has been rendered in the matter titled : Malabar Diamond Gallery P. LTD. Vs. Additional Director General, Directorate of Revenue Intelligence, Chennai [2016 (341) E.L.T. 65 (Mad.)].

2.3. This Judgement has been rendered by a Division Bench comprising of Hon'ble Mr. Justice S. Manikumar and Hon'ble Mr. Justice D. Krishnakumar.

3. Besides this we are informed by the learned counsel for the parties, that the very same Division Bench has rendered a Judgement dated 03.06.2016 in W.A.Nos.954 and 1056 of 2014 wherein, it has directed release of the seized goods i.e.gold items.

3.1. We must note that this Judgement does not relate to the show cause notice dated 16.9.2013. However, the issue involved, even according to the counsels, is similar.

4. Furthermore, we are informed that a clarification application was preferred on behalf of the Department which was dismissed and that thereafter, a review petition was filed, which is pending adjudication with the Division Bench.

5. In these circumstances, we called upon Mr.Mohan Parasaran, the learned senior advocate, who appears for the appellants to address us on the issue as to whether in the given facts and circumstances, we could take a contra view with respect to the same show cause notice, which adverts to the involvement of the appellants as well as Malabar Diamond Gallery Private Limited.

5.1. Mr. Mohan Parasaran, faced with this situation submitted that the appellants would await the decision in the review petition filed in W.A.Nos.954 and 1056 of 2014.

6. Mr.Mohan Parasaran, further submits that if need be, he would approach the Hon'ble Chief Justice for having the captioned appeals being posted before the same Bench before which the review petition is pending.

7. We may also record that in W.P.Nos.27948 and 27949 of 2013, there is a stay ordered on the operation of the show cause notice, dated 16.9.2013. The said writ petitions are pending before the learned Single Judge.

7.1. We are informed that these writ petitions have been filed by Mr.R. Mahaveer Pipada and Mr. Ashish Mundhra.

8. At request, re-notify after four weeks."

3. We checked up the status of W.P.Nos.27948 and 27949 of 2013, in which the show cause notice dated 16.09.2013 was stayed by this Court, and those writ petitions are shown to be pending as per the status report. The status report is placed on record.

4. In view of the above and in the facts and circumstances of the case, we leave it open for both the parties to raise their contentions in the pending writ petitions viz., W.P.Nos.27948 and 27949 of 2013. The interim order of stay granted in the said writ petitions shall continue, as noted by the Co-ordinate Bench of this Court in the order dated 28.07.2017, till the disposal of the writ petitions.

5. With these observations, the writ appeals are disposed of. No costs. Consequently, M.P.Nos.1 and 2 of 2014 and M.P.Nos.1 and 2 of 2015 are closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

bbr

To

1.The Commissioner of Customs
Sea Port Import, Customs House,
No.60, Rajaji Salai,
Chennai.

+2cc to Mr.S.Ramesh Kumar, Advocate SR.88605
+1cc to Mr.V.Sundareswaran, Advocate SR.88823
+1cc to M/s.Row & Reddy, Advocate SR.88454

W.A.Nos.825 and 826 of 2014

VBA (CO)
CB(26/11/2019)

WEB COPY