IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 10.06.2019

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Writ Appeal No.140 of 2017
and
CMP Nos.2372 and 2422 of 2017

M/s. JMS Exports
Rep. by its Proprietor
Shri Arul James
No.246, 7th Street, Gandhi Nagar
Vyasarpadi, Chennai - 600 039. .. Appellant

Versus

1. The Commissioner of Customs, Chennai II,
Commissionerate, Customs House
No.60, Rajaji Salai, Chennai-600 001.

2. The Additional Commissioner of Customs -
(Group - 5A)
Commissioner of Customs - II
Customs House
No.60, Rajaji Salai, Chennai-600 001.
.. Respondents

Writ Appeal filed under Section 15 of the Letter Patents Act against the order dated 28.11.2016 made by this Court in W.P.No.13671 of 2016.

Prayer in W.P.No.13671 of 2016:
Writ Petition filed under Article 226 of the Constitution of India Praying for issuance of a Writ of Ceritorarified Mandamus Calling for the records of the 2nd respondent made in order in Original No.45505 of 2016 dated 08.03.2016 in F.No.S59/51/2015-Gr. 5A quash the same and further direct the respondents to cause release of 200 Nos. of Sony brand LED TV sets covered under the Bill of Entry No.5901603 dated 24.06.2014 in terms of the orders passed by this Honble Court in WP.No.5700/2015 dated 16.10.2015.

For Appellant : Mr.M.Abdul Nazeer
For Respondents : Mr.T.Pramodkumar Chopda

ORDER

(Order of the Court was delivered by V.BHAVANI SUBBAROYAN,J.)

The present Writ Appeal is filed as against the order passed in W.P.No.13671 of 2016, wherein, the learned Single Judge dismissed the Writ Petition by giving liberty to the appellant to file an appeal before the Commissioner of Appeals within 30 days from the date of receipt of the order.

2. In the said Writ Petition, the writ petitioner has challenged the order, dated 08.03.2016 passed by the second respondent herein, which is order-in-original No.45505 of 2016 in F.No.S59/51/2015-GR-5A., and also sought a direction to the respondents therein to cause release of 200 numbers of Sony brand LED TV sets covered under the Bill of Entry No.5901603 dated 24.06.2014 in terms of the orders passed by this Court in W.P.No.5700 of 2015 dated 16.10.2015.

3. The appellant's grievance, as addressed by the appellant in the affidavit filed in support of the Writ Petition, is that the bill of entry No.5901603 through M/s.Cresent Shipping Service for import of 200 numbers Sony LED TV sets by valuing the same at Rs.52,81,214/- was filed. However, when the DRI Officer examined the containers, had found 200 TV sets, in which, the appellant had smuggled 5 kgs of gold concealed in ballot box Nos.8 and 9, valued at Rs.1,42,70,000/- and subsequently the same were seized by the DRI Officer.

4. After all the procedures like arrest, remand and seizure of certain articles and documents, show-cause notice was issued proposing confiscation of gold bars under Sections 111(d), 111(i), 111(l) and 111(m) and for the television sets under Sections 111(d), 118(a) and 119 of the Customs Act, 1962, besides imposing penalty under Sections 112 and 114(AA) of the Customs Act, 1962.

5. After a prolonged legal battle finally, an order in Original No.45505 of 2016 dated 08.03.2016 came to be passed by the second respondent, which was challenged in W.P.No.13671 of 2006, on the ground that the second respondent, while passing the impugned order-in-original,

breached the principles of natural justice and the investigating department did not properly investigate with regard to the petitioner's status that he was only a name lender for import of television sets and there were sufficient proof to show that the appellant was only a name lender. Asserting several other grounds of challenge, the appellant approached the writ jurisdiction questioning the validity of the order in original passed by the second respondent.

6. The learned Single Judge dismissed the same on the ground of availability of alternative remedy to the appellant under the Customs Act. Challenging the order passed by the learned Single Judge, the present Writ Appeal is filed.

7. The learned counsel appearing for the appellant vehemently contended that the learned Single Judge ought to have held that the writ petition falls on the exceptional category and therefore, when challenge was made under Article 226 of the Constitution of India, there is no bar despite there being an alternative remedy available. In fact, the learned counsel further contended that when an order is passed under surmises and conjunctures, the writ Court has got jurisdiction to entertain and quash the said proceedings.

8. In support of his argument, the learned counsel appearing for the appellant also cited certain Judgments with regard to the procedures followed by the second respondent, when the impugned order in the writ petition was passed.

9. Heard the learned counsel appearing on either side and perused the materials available on record.

10. The case before us is that the appellant had smuggled gold under the guise of importing 200 numbers of Sony brand LED TV sets. The second respondent passed the order in original, by which, the second respondent had seized 5 kgs of foreign marked gold, totally valued at Rs.1,42,00,070/-, apart from confiscating absolutely 200 numbers of Sony brand LED TV sets covered under the bill of entry No.5901603, dated 24.06.2014 valued at Rs.1,25,85,000/-. The second respondent imposed total penalty of Rs.3,15,00,000/- on the appellant and others under various other provisions of the Customs Act, 1962.

11. It could be seen from the affidavit filed in

support of the Writ Petition that challenging the order in original, the appellant has approached the writ jurisdiction without exhausting the alternative remedy available under the statute. It could be further seen that the appellant had not raised any special circumstances before the learned Single Judge to invoke Article 226 of the Constitution of India when there being an efficacious alternative remedy available under the statute.

12. As rightly held by the learned Single Judge, it may not be sufficient for the appellant by placing reliance on BIS Certificate, dated 13.09.2013 for release of TV sets which is not primarily a question of law, but purely a mixture of question of law and facts.

13. It is also evident from the records that this Court by an order, dated 16.10.2015, directed the appellant to furnish 100% Bank guarantee for the duty assessed on the value of goods and on furnishing the same, the second respondent was directed to release seven pallet boxes, except boxes 8 and 9, which contained smuggled gold and that condition was not complied with by the appellant. Thereafter only, the order in original came to be passed by the second respondent. It is evidently clear that an appeal provision is provided under Section 128 of the Customs Act, 1962, wherein, the statute provides that any person aggrieved by the decision or order passed under the Act by an officer of customs lower in rank than the Principal Commissioner or Commissioner of Customs may appeal to the Commissioner of Appeals within 60 days from the date of communication of such decision or order.

14. The appellant, foregoing the provisions permitting him to appeal before the Commissioner of Appeals, has approached the writ Court challenging the order in original invoking Article 226 of the Constitution of India. Unless and otherwise there exists a special circumstances, especially when the person invoking Article 226 of the Constitution of India, prima facie, to prove that the authority had no jurisdiction to pass such an order or exceeded his jurisdiction while passing such order or when the principles of natural justice is given a go-by by the said authority, Article 226 of the Constitution of India cannot be invoked if there is an alternative remedy available under the statute. In the present case, on a plain reading of the affidavit filed by the appellant in the writ petition, no

such exigencies have been prima faciely taken to the satisfaction of the learned Single Judge. Even before this Court, in the present appeal also, the appellant has not raised any grounds to interfere in the order in original passed by the second respondent.

15. Under these circumstances, this Court is of the opinion that the appellant ought to have filed an appeal invoking Section 128 of the Customs Act, 1962, rather than invoking Article 226 of the Constitution of India, despite there being an alternative and efficacious remedy available under the statute. It is made clear that when the statute prescribes certain mode of approaching the authorities by way of an appeal, the same shall not be dispensed with by invoking Article 226 of the Constitution of India, unless and otherwise, the person approaching proves prima faciely the special circumstances that warrants invoking jurisdiction under Article 226 of the Constitution of India.

16.In these circumstances, the order passed by the learned Single Judge cannot be interfered with and thus, the present Writ Appeal deserves to be dismissed and the same is dismissed. Consequently, interim orders, if any, granted by this Court stands vacated. The appellant is at liberty to file an appeal before the Commissioner of Appeals within a period of 30 days from the date of receipt of a copy of this order and the Commissioner of Appeals shall decide the same in accordance with law, following the procedures contemplated under the statute scrupulously, without reference to the limitation. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

ps/mra

To

1. The Commissioner of Customs, Chennai II,
Commissionerate, Customs House
No.60, Rajaji Salai, Chennai-600 001.

2. The Additional Commissioner of Customs –
(Group – 5A)
Commissioner of Customs – II
Customs House
No.60, Rajaji Salai, Chennai-600 001.

+1cc to Mr. M.Abdul Nazeer, Advocate SR.No. 47664

Writ Appeal No.140 of 2017
and
CMP Nos.2372 and 2422 of 2017

bs (CO)
A.SK(19/08/2019)