

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	17.02.2020
Pronounced On	25.02.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.7141 of 2013

and

M.P.No.1 of 2013

Segudawood Ameer ... Petitioner

Vs.

1.The Additional Commissioner
of Customs (Airport),
Meenambakkam,
Chennai - 600 027.

2.The Commissioner of Customs (Appeals),
Custom House, No.60, Rajaji Salai,
Chennai - 600 001.

3.The Joint Secretary to the Government
of India (Revision Application),
Ministry of Finance (Department of Revenue),
14, HUDCO Vishala Building,
B-Wing, 6th Floor, Bhikaji Cama Place,
New Delhi - 110 066.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the 3rd respondent in Order No.29/13-Cus, dated 18.01.2013, in Revision Application F.No.373/43/B/12-R.A., confirming the order of the 2nd respondent in Order-in-Appeal C.CUS.No.171/2012, dated 20.03.2012 and order of the 1st respondent in O.S.No.387/2011-Air, dated 24.07.2011 and quash the same and to direct that the goods are not liable for confiscation and no redemption fine and penalty is imposable and to set aside the redemption Fine of Rs.1,55,000/- and penalty of Rs.19,000/- imposed on the petitioner and to refund the same.

For Petitioner : Mr.A.K.Jayaraj

For Respondents : Mr.T.R.Senthil Kumar
Senior Standing Counsel

O R D E R

The petitioner is aggrieved by the order dated 18.01.2013 passed by the 3rd respondent in bearing reference Order No.29/13-Cus, under Section 129DD(1) of the Customs Act, 1962.

2. The case of the petitioner is that he had carried with 32 number of gold chains (22 carat) weighing 177 grams valued at 3,84,444/- and when he landed at Chennai Airport with aforesaid gold chains, it was confiscated and was asked to pay a redemption of fine of Rs.1,92,000/- under Section 125 of the Customs Act, 1962 and penalty of Rs.38,000/- under Section 112 (a) of the Customs Act, 1962.

3. It appears that the petitioner had waived the issue of Show Cause and therefore, a spot adjudication order was passed on 24.07.2011. The reason given for confiscating the gold chains from the person of the petitioner reads as under:-

The person is an Indian National. He has brought the above said 32 Nos of gold chains and attempted to pass through green channel without declaring to customs. He has admitted in his stated that the gold was given to him by somebody in Singapore for handling over to an unknown person in Chennai for a monetary benefit of Rs.3,000/-. His stay abroad is more than six months, hence he is eligible for concessional rate of duty as per the notification No.31/2003 dated 01.03.2003 as amended. However, the person was not in possession of sufficient foreign currency for payment of duty. As the person has not declared the gold, the same is liable to confiscation under Section 111(1) and (m) and the person is liable to penal action under Section 112 of the Customs Act, 1962.

4. The findings of the Assistant Commissioner of Customs (Airport) reads as under:-

"Person did not declare the goods. Did not have foreign currency to pay duty. Since intention was to evade duty, goods liable for

confiscation."

5. Aggrieved by the said order, the petitioner filed an appeal before the Commissioner of Customs (Appeals) in Appeal No.171/2012-Air. By an order dated 20.03.2012, the 2nd respondent Commissioner of Customs (Appeals) has disposed the said appeal with the following observations:-

Moreover, I find that the appellant is an Indian National and has stayed abroad for more than six months, hence he is eligible for concessional rate of duty as per the Notification No.31/2003 dated 01.03.2003 as amended. I also find that there is no previous offence case registered against the appellant. Taking overall circumstances of the case, I find that the redemption fine and the penalty imposed are on the higher side. Therefore, in the interest of the justice and fair play, I reduce the redemption fine to Rs.1,55,000/- (Rupees One Lakh Fifty Five Thousand Only) and the penalty to Rs.19,000/- (Rupees Nineteen Thousand Only).

6. Thus, the redemption fine of Rs.1,92,000/- was reduced to Rs.1,55,000/- imposed under Section 125 of the Customs Act, 1962 and the penalty of Rs.38,000/- was reduced to Rs.19,000/- under Section 112(a) of the Customs Act, 1962 and benefit of Notification No.31/2003 dated 01.03.2003 was allowed to the petitioner.

7. The 3rd respondent Revisional Authority vide impugned order dated 18.01.2013 has upheld the said order of the 2nd respondent Commissioner of Customs (Appeals). Aggrieved by the same, the present Writ Petition has been filed by the petitioner.

8. It is submitted by the learned counsel for the petitioner that the petitioner was an eligible passenger within the meaning of Notification No.31/2003-cus dated 01.03.2003.

9. It is therefore submitted that the 1st respondent erred in imposing and upholding penalty under Section 112(a) of the Customs Act, 1962 and Redemption fine under Section 125 of the Customs Act, 1962.

10. It is further submitted that the Commissioner of Customs (Appeals) has also confirmed the position that

petitioner had no previous case and had therefore decided to reduce the redemption fine and the penalty.

11. It is therefore submitted that since the petitioner is a bona fide importer who had purchased the gold chains for his impending wedding for gifting to his relatives at the time of his wedding, the imposition of redemption fine and penalty was unjustified.

12. It is submitted that having extended the benefit of Notification No.31/2003-Cus dated 01.03.2003, imposition of penalty and redemption fine cannot be justified in the facts and circumstances of the case as petitioner was employed in Singapore and was having a work permit and had returned to India after a period of 22 months.

13. It is further submitted that since the petitioner was eligible for the benefit of the above notification as he had stayed for more than six months, upholding i9redemption fine of Rs.1,55,000/- and penalty of Rs.19,000/- was not proper.

14. Per contra, the learned Standing Counsel for respondents submitted that the petitioner had failed to declare 32 gold chains which he was carrying in person before the customs authorities and therefore Section 111 (l) and (m) were attracted in the facts and circumstances of the case.

15. It was further submitted that under Section 77 of the Customs Act, 1962, the owner of any baggage was required to make appropriate declaration before the proper officer of the Customs.

16. It was further submitted that in the present case, the petitioner had carried the gold chains in his pant pocket, but had failed to declare the same before the customs authorities which led to passing of order in original dated 24.07.2011 by the 1st respondent.

17. It was therefore submitted that the Commissioner of Customs (Appeals) has rightly concluded that the gold brought by the petitioner did not constitute a bonafide baggage under Section 79 of the Customs Act, 1962 read with paragraph 2.20 of the Foreign Trade Policy and therefore the "redemption fine and the penalty" imposed on the petitioner cannot be assailed.

18. It was further submitted that after considering overall fact and circumstances of the case, the 2nd respondent Commissioner of Customs (Appeals) found that in absence of ingenious concealments of "Gold Jewellery" the benefit of Notification No.31/2003-Cus dated 01.03.2003 was allowed.

19. It was therefore submitted that both penalty and redemption fine have been reduced and therefore the impugned order of the 3rd respondent requires no further interference.

20. It was submitted that the order passed by the 3rd respondent Revisional Authority would also require no interference as it is not the decision perse but the decision making process which can be questioned under Article 226 of the Constitution of India and there is no fault with the decision making process. The respondents therefore prayed for dismissal of the present writ petition.

21. I have considered the arguments advanced on behalf of the petitioner and the respondents.

22. As per Section 2(39) of the Customs Act, 1962, "smuggling", in relation to any goods, means any act or omission which will render such goods liable to confiscation under Section 111 or Section 113 of the Customs Act, 1962.

23. If there was an attempt to smuggle the goods without payment of customs duty by not declaring the same with the customs officials at the Airport, the goods are confiscable under Section 111 of the Customs Act, 1962.

24. In fact, all the International Airlines provide Disembarkation Card to all the passengers in the aircraft itself. Every passenger is expected to fill up the Disembarkation Card clearly mentioning the quantity and value of goods that he/she has carried in person/baggage.

25. On arrival, the passengers are first cleared by immigration officers at the Airport. The officer retains the immigration portion of the Disembarkation Card. Thereafter, passenger takes the delivery of his baggage from the conveyer belts & passes through Customs.

26. Only bonafide baggage items for personal use or use by members of family are allowed to be imported freely as per Baggage Rules, 1998 framed under Section 79 of the Customs Act, 1962.

27. As per the Baggage Rules, 1998 as amended in 2006, a male passenger returning to India can carry in his person/baggage only for a value of Rs.10,000/-. Even that quantity and value has to be declared by person.

28. Under Customs Notification No.31/2003-Cus dated 01.03.2003, an eligible passenger of Indian origin is allowed

to import upto 10kg of gold provided customs duty is paid in convertible foreign exchange.

29. In this case, the petitioner had failed to declare 177 grams of gold carried by him in his pant pocket and only when he was intercepted by the customs officers before he left the port, he admitted that he had carried 32 Nos. of gold chain weighing 177 grams for an unknown person to be given to an unknown person for a consideration of Rs.3000/.

30. Statements obtained from the petitioner. He has admitted that was carrying the gold chains weighing 177 grams with him in person, which was not declared by the petitioner. Though it is the case of the petitioner that he had declared the gold jewellery and the respondents have wrongly confiscated the same, the fact that he has not resiled from the statement shows that there was intention to smuggle the 32 numbers of gold chain.

31. It is the definite case of the 1st respondent that petitioner had failed to declare 177 grams of gold jewellery (32 numbers of gold chains) and therefore the petitioner was liable to pay both fine and redemption fine.

32. Section 111 (l) and (m) of the Customs Act, 1962, which have been invoked to impose penalty & redemption fine read as under:-

Section 111. Confiscation of improperly imported goods, etc- The following goods brought from a place outside India shall be liable to confiscation:-

- a)
- b)
- c)
- d)
- e)
- f)
- g)
- h)
- i)
- j)
- k)
- l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under Section 77;

- m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under Section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54;
- n)
- o)
- p)

33. Since the petitioner failed to declare gold chains numbering 32, they were confiscated and the petitioner was liable for penalty and redemption fine under Section 112(a) and 125 of the Customs Act, 1962. To avail the benefit of the Customs Notification No.31/2003-Cus dated 01.03.2003, the petitioner was not only required to declare the quantity of gold carried by him in person but also was required to pay the customs duty in foreign exchange. This was not done by the petitioner.

34. Though, the petitioner had given a statement that he was carrying the gold for a person to be delivered to an unknown person for a sum of Rs.3000/- yet the benefit of Customs Notification No.31/2003-Cus dated 01.03.2003 has been given to the petitioner by the 2nd respondent Commissioner of Customs (Appeals) vide Order in Appeal No.C.Cus.No.171 of 2012 dated 20.03.2012.

35. No further appeal/ revision was filed by the respondents against the order of the 2nd respondent, even though the petitioner had not established by any documents to substantiate that 32 numbers of gold chain were purchased by him in Singapore. Therefore, the benefit of Customs Notification No.31/2003-Cus dated 01.03.2003 ought not to have been extended.

36. The petitioner has also since paid the customs duty and the penalty and redemption fine on 02.08.2012 after the 2nd respondent Commissioner of Customs (Appeals) partly allowed the appeal vide Order-in-Appeal C.Cus.No.171/2012 dated 20.3.2012.

37. The Commissioner of Customs (Appeals) reduced the penalty by 50% from Rs.38,000/- to Rs.19,000/- and the redemption fine of Rs.1,92,000/- to 1,55,000/-.

38. Both the original authority the Commissioner of

Custom (Appeals) have justified the imposition of penalty under Section 112 of the Customs Act, 1962 without proper discussion as to under which of sub- clause of the aforesaid Section penalty was to be imposed.

39. The imported gold chains were not a prohibited item. The petitioner has attempted to smuggle of the gold chains and/or acted as an accessory for another person. However, the benefit of Customs Notification No.31/2003-Cus dated 01.03.2003 has been extended.

40. Penalty that could be imposed on the petitioner is only under Section 112(ii) of the Customs Act, 1962. Other situations contemplated under the aforesaid provision are not attracted. Penalty imposable under Section 112(ii) is subject to penalty Section 114A of the Customs Act, 1962. Penalty under Section 114A of the Customs Act, 1962 is not attracted. Penalty under Section 112(ii) of the Customs Act, 1962, can vary only between 10% of the duty sought to be evaded or Rs.5,000/- whichever is higher.

41. Therefore, the penalty that could be imposed under Section 112 (ii) of the Customs Act, 1962 on the petitioner could not exceed 10% of the duty or Rs.5000/-, whichever is higher.

42. 10% of Rs.39,598/- is only Rs.3,959/-. Therefore, maximum penalty that can be imposed on the petitioner could not exceed of Rs.5,000/-. I am therefore inclined to modify the penalty to Rs.5,000/- from Rs.18,000/- ordered by the 2nd respondent Commissioner of Customs (Appeal) vide Order in Appeal No C.Cus. 171 of 2012 dated 20.3.2012.

43. Accordingly, the impugned order of the 3rd respondent upholding the penalty of Rs.19,000/- to that extent stands modified.

44. Redemption fine under Section 125 of the Customs Act, 1962 cannot exceed the market value of the confiscated goods, less the duty chargeable thereon. Since customs duty sought to be evaded was only Rs.39,598/- by the petitioner and he being a first-time offender having indulged in an attempt to smuggle 177 grams gold chains number of 32 and considering the fact that the benefit of Customs Notification No.31/2003-cus dated 01.03.2003 has been extended to the petitioner and there being no challenge to extension of such benefit to the petitioner, the redemption fine of Rs.1,55,000/- appears to be on the higher side.

45. Under these circumstances, I am constrained to reduce

the redemption fine to Rs.50,000/- from Rs.1,55,000/- that was modified by the 2nd respondent Commissioner of Customs (Appeals). Accordingly, the impugned order is further modified.

46. In fine, the impugned order dated 18.01.2013 of the 3rd respondent upholding the imposition of penalty under Section 112 and redemption fine are modified as follows:-

- i. The penalty of Rs.38,000/- originally imposed by the 1st respondent and reduced to Rs.19,000/- by the 2nd respondent is further reduced to Rs.5,000/-.
- ii. The redemption fine of Rs. 1,92,000/- imposed by the 1st respondent and reduced to Rs.1,55,000/- by the 2nd respondent is further reduced to Rs.50,000/-.
- iii. The respondents are therefore directed to refund the balance amount of Rs.1,19,500/- [Rs.1,74,500-50,000 - 5,000] to the petitioner within a period of three months from date of receipt of a copy of this order.

47. The present Writ Petition stands disposed with the above observations. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

jen

To

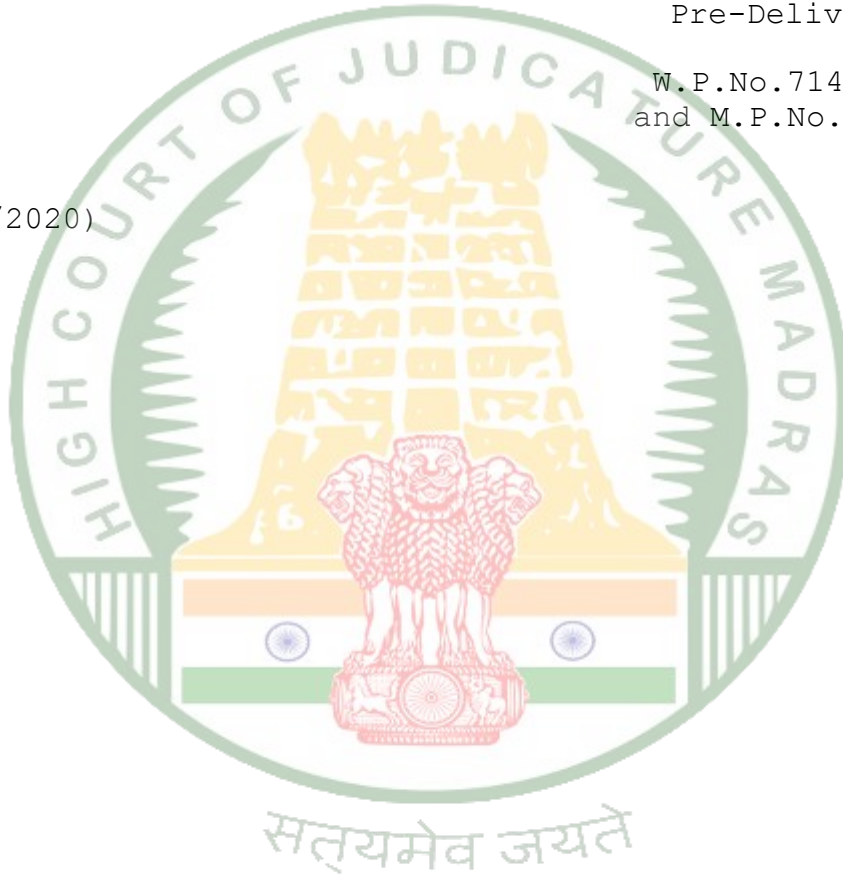
1. The Additional Commissioner of Customs (Airport),
Meenambakkam, Chennai - 600 027.
2. The Commissioner of Customs (Appeals),
Custom House, No.60, Rajaji Salai,
Chennai - 600 001.

3.The Joint Secretary to the Government of India
(Revision Application),
Ministry of Finance (Department of Revenue),
14, HUDCO Vishala Building,
B-Wing, 6th Floor, Bhikaji Cama Place,
New Delhi - 110 066.

+1cc to Mr.A.K.Jayaraj, Advocate, S.R.No.16451

Pre-Delivery Order
in
W.P.No.7141 of 2013
and M.P.No.1 of 2013

AK (CO)
RSI (21/05/2020)



WEB COPY