BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **10.03.2020**
CORAM:
THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN
W.P.(MD) No.26895 of 2019

K.Ganesan ... Petitioner

/vs./

The Joint Commissioner of Customs (Adjudication),
O/o. the Commissioner of Customs,
Williams Road,
Trichy. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the respondent to provisionally release the seized gold in OR.No.278 of 2019 dated 19.11.2019, in terms of Section 110.A of the Customs Act, 1962 pending disposal of the adjudication proceedings.

For Petitioner : Mr.K.Rajeshwaran
For Respondent : Mr.R.Aravindan
Senior Standing Counsel

ORDER

The writ petition is filed in the nature of mandamus seeking a direction against the respondent/the Joint Commissioner of Customs (Adjudication), Williams Road, Trichy, to provisionally release the gold, which had been seized in OR.No.278 of 2019 dated 19.11.2019 under Section 110 (A) of the Customs Act, 1962, pending disposal of the adjudication process.

2.The writ petitioner, K.Ganesan, S/o.Karuppaiah, Old No.136, N.No.4/113, Mannadiyamman Kovil Street, Sivaganga 630 205, had arrived from Singapore at Trichy airport on 19.11.2019. He was found in possession of three unfinished gold chains weighting 149.5 grams. He claimed that he had brought the said gold chains for his two married daughters and his future daughter-in-law. However, the unfinished gold chains have been seized. In this regard, the petitioner made an application for release of the seized gold chains, taking advantage of Section 110 (A) of the Customs Act, 1962. A representation was also given.

3.The petitioner had also placed reliance on the judgment of a learned Single Judge of this Court in ***W.P.(MD) Nos.2985 and 3124 of 2018 (Tajudeen Vs. Hasina Balkis),*** which were decided together on 21.02.2018, whereby, a learned Single Judge of this Court, had held that when the authorities were yet to issue the show cause notice under Section 124 of the Customs Act, 1962, under the provisions of Section 110 (A) of the Customs Act, 1962, if the petitioner deposits 50% of the duty for the value of the gold chains seized from him, the respondent shall release the seized gold items. That judgment was taken up in appeal, which is reported in ***2018 (19) G.S.T.L. 425 (Mad) (Commissioner of Customs, Trichy Vs. Tajudeen).*** A Division Bench of this Court, by order dated 11.10.2018, had upheld the order of the learned Single Judge and had stated that the Department can proceed with the show cause notice.

4.The learned counsel for the petitioner also primarily based his arguments on the reasoning of the learned Single Judge. It was stated that in the petitioner's representation dated 02.12.2019, that the petitioner is ready and willing to pay 50% of the value of the seized property and also to give necessary undertaking as required under Section 110 (A) of the Customs Act, 1962.

5.On the other hand, the learned senior standing counsel appearing for the respondent had seriously objected to the grant of any relief for the petitioner. The learned counsel relied on the judgment of a learned Single Judge of this Court reported in ***2016 (2) CWC 191 (Sheik Mohammed Rafique Ahmed Vs. The Joint/Additional Commissioner of Customs Airport, New Customs House, Meenambakkam, Chennai - 27)*** wherein holding that when adjudication process has not been completed and only after the adjudication process, the adjudicating authority would decide whether the goods confiscated under Sections 111 (d) and 111 (1) of the Customs Act, 1962, could be released or not and the goods confiscated cannot be released under Section 111 (1) of the Customs Act, 1962. A direction was issued by a learned Single Judge to the adjudicating authority to dispose of the proceedings at the earliest, after affording necessary opportunity.

6.The learned counsel also relied on the Division Bench judgment in W.A.No.377 of 2016 ***(Malabar Diamond Gallery Private Limited Vs. Additional Director General, DRI Chennai and others)*** dated 28.07.2016, wherein, a Division Bench of this Court had granted necessary discretion to the adjudicating authority to deny provisional release of seized goods.

7.It is also pointed out by the learned counsel pursuant to the said judgment, a circular No.35/2017-Customs dated 16.08.2017 has been issued, wherein, it had been stated that the observation of Madras High Court in ***Malabar Diamond Gallery Private Limited (referred supra)*** should be kept in mind while deciding to grant or to deny provisional release of seized goods. It is also stated that if a decision is taken to release the goods, then necessary bond should be taken and the importer should pay the duty, fine and or penalty as may be adjudged by the adjudicating authority subject to appellate provisions under the Act. It was therefore stated that the writ petition is premature, since the adjudicating authority has not passed any orders.

8.I have carefully considered arguments advanced.

9.Admittedly, the petitioner herein was found in possession of three unfinished gold chains weighting 149.5 grams while coming from Singapore at Trichy airport on 19.11.2019. The petitioner has given his explanation that he had brought the same for his two married daughters and his future daughter-in-law. The goods have been seized. The petitioner had sent a representation claiming provisional release under Section 110 (A) of the Customs Act, 1962. Under Section 110 (A) of the Customs Act, 1962, the goods which were seized can be released provisionally provided a bond is executed by the person, from whom the goods were seized. It must however be kept in mind that penalty has to be decided during the adjudication process. During the adjudication process, the adjudicating authority has to take a further decision whether to provisionally release the seized goods or not.

10.The learned counsel for the petitioner stated that the adjudication process under Section 125 of the Customs Act, 1962 and Section 110 (A) of the Customs Act and independent of the adjudication process and since it has been specifically indicated in the said statute, the petitioner can claim provisional release of goods on providing necessary bond on payment of duty and penalty. The penalty can be decided only during the adjudication process.

11.The circular No.35/2017-Customs dated 16.08.2017 had been issued pursuant to the observations made by a Division Bench of this Court in ***Malabar Diamond Gallery Private Limited (referred supra).*** The Division Bench in that case, had given sufficient discretion to the adjudicating authority to even deny provisional release of the goods under Section 110 (A) of the Customs Act, 1962. When such discretion is vested with the authority, such discretion should be respected by all other authorities including by this Court.

12.The adjudicating authorities should be permitted to exercise their discretion in manner known to law. While exercising their discretion, they may also examine the statements made by the petitioner. Naturally, they would have to provide an opportunity to the petitioner of being heard. I am of the firm opinion that when the adjudicating authority is empowered even to reject provisional release of goods, unless such orders are passed by the adjudicating authority, this Court should not interfere with such process. Both the learned counsels have not brought to the notice either to a learned Single Judge of this Court or the judgment of the Division Bench in W.A.No.377 of 2016 ***(Malabar Diamond Gallery Private Limited (referred supra)).*** A learned Single Judge of this Court had passed similar orders granting discretion to the adjudicating authority to take a decision on the said issue. It is the judgment reported in ***2016 (2) CWC 191 (Sheik Mohammed Rafique Ahmed (referred supra)).*** The learned Single Judge had very categorically stated that when goods were seized under Sections 111 (d) and 111 (1) of the Customs Act, 1962, provisional release of the goods under Section 110 (A) of the Customs Act, 1962, does not arise. It was specifically stated that provisional release of the goods can be granted only after the completion of adjudication process.

13.In view of the above, the respondent/Adjudicating Authority has to take a decision to provisionally release the goods. The Adjudicating Authority may complete the adjudicating process on or before 30.04.2020 and may give an opportunity of personal hearing to the petitioner, if he so requires.

14.Accordingly, the Writ Petitio is dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

The Joint Commissioner of Customs (Adjudication),
O/o. the Commissioner of Customs,
Williams Road,
Trichy.

+1 CC to M/s.R.ARAVINDAN, Advocate (SR-10955[F] dated 11/03/2020)
+1 CC to M/s.K.RAJESHWARAN, Advocate (SR-11079[F] dated 11/03/2020)

W.P.(MD) No.26895 of 2019
10.03.2020

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