IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.04.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. Nos.51, 55, 56, 58 & 60 of 2020

Chandrasegaram Vijayasundaram …Petitioner in WP.No.51 of 2020
Raveendhiran Shanthadevi …Petitioner in WP.No.55 of 2020
Chandrasegaram Rajaluxmi …Petitioner in WP.No.56 of 2020
Vijayasundaram Mahalakshmi …Petitioner in WP.No.58 of 2020
Somasundaram Chandrasegaram …Petitioner in WP.No.60 of 2020

Vs.

1.Principal Commissioner of Customs,
Commissionerate-I,
Chennai Airport and Aircargo Complex,
New Custom House,
Meenambakkam, Chennai-600 027.

2.Joint Commissioner of Customs,
(Adjudication - Air),
Commissionerate-I,
Chennai Airport and Aircargo Complex,
New Custom House,
Meenambakkam, Chennai-600 027.

3.Assistant Commissioner of Customs,
(Preventive - Refunds),
Commissionerate-I,
Chennai Airport and Aircargo Complex,
New Custom House,
Meenambakkam, Chennai-600 027.

4.Principal Commissioner (Revision Application)
and Ex Officio Addl. Secretary to Govt. of India,
8th Floor, Centre-1, World Trade Centre,
Cuffe Parade,
Mumbai - 400 005. ...Respondents in all WPs

Prayer in WP.No.51 of 2020: Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of mandamus, directing the 1st and 3rd respondents to act on my refund application in F.No.20/2018-(Prev. Refunds) and cause refund of an amount of Rs.5,10,000/- pursuant to order of the Commissioner of Customs (Appeals) in Order in Appeal - Airport C. Cus. I

No.69 to 73/2018 dated 27.4.2018 pending disposal of the revision application in F.No.380/59 - 63/B/SZ/2018-RA pending on the file of the 4th respondent.

Prayer in WP.No.55 of 2020: Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of mandamus, directing the 1st and 3rd respondents to act on my refund application in F.No.18/2018-(Prev. Refunds) and cause refund of an amount of Rs.3,90,000/- pursuant to order of the Commissioner of Customs (Appeals) in Order in Appeal - Airport C. Cus. I No.69 to 73/2018 dated 27.4.2018 pending disposal of the revision application in F.No.380/59 - 63/B/SZ/2018-RA pending on the file of the 4th respondent.

Prayer in WP.No.56 of 2020: Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of mandamus, directing the 1st and 3rd respondents to act on my refund application in F.No.16/2018-(Prev. Refunds) and cause refund of an amount of Rs.3,90,000/- pursuant to order of the Commissioner of Customs (Appeals) in Order in Appeal - Airport C. Cus. I No.69 to 73/2018 dated 27.4.2018 pending disposal of the revision application in F.No.380/59 - 63/B/SZ/2018-RA pending on the file of the 4th respondent.

Prayer in WP.No.58 of 2020: Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of mandamus, directing the 1st and 3rd respondents to act on my refund application in F.No.19/2018-(Prev. Refunds) and cause refund of an amount of Rs.3,90,000/- pursuant to order of the Commissioner of Customs (Appeals) in Order in Appeal - Airport C. Cus. I No.69 to 73/2018 dated 27.4.2018 pending disposal of the revision application in F.No.380/59 - 63/B/SZ/2018-RA pending on the file of the 4th respondent.

Prayer in WP.No.60 of 2020: Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of mandamus, directing the 1st and 3rd respondents to act on my refund application in F.No.17/2018-(Prev. Refunds) and cause refund of an amount of Rs.4,25,000/- pursuant to order of the Commissioner of Customs (Appeals) in Order in Appeal - Airport C. Cus. I No.69 to 73/2018 dated 27.4.2018 pending disposal of the revision application in F.No.380/59 - 63/B/SZ/2018-RA pending on the file of the 4th respondent.

(In all WPs)
For Petitioner : Mr.B.Satish Sundar
For Respondents : Mr.M.Santhanaraman (for R1 to R3)
Senior Standing Counsel

COMMON ORDER

Heard Mr.B.Satish Sundar, learned counsel for the petitioners and Mr.M.Santhanaraman, learned Senior Standing Counsel for the respondents 1 to 3.

2.The prayer in these writ petitions is for a mandamus directing the 1st and 3rd respondents i.e. the Principal Commissioner of Customs, Commissionerate-I, Chennai Airport and Aircargo Complex and Assistant Commissioner of Customs, (Preventive - Refunds), Commissionerate-I, Chennai Airport and Aircargo Complex, to act on the refund applications of the petitioners and cause refund of amounts paid by the petitioners. The entitlement of the petitioners to the refunds is based on the order of the first appellate authority i.e. the Commissioner of Customs (Appeals-I) in the appellate order, where he has held in favour of the petitioners setting aside the order confiscating jewellery and extending an option for redemption on payment of redemption fine and penalty. On passing of the original order in these cases, the petitioners had opted for redemption, redeemed the assets seized and re-exported the jewellery on payment of fine and penalty.

3. Consequent to the orders of the first appellate authority, the petitioners state that they are entitled to refund of the redemption fine and penalty remitted by them. However, the defence of the respondents was that a revision, in terms of Section 129DD of the Customs Act, 1962, has been filed as early as in May 2018 and thus, till such time the revision applications are disposed, the respondents would not be inclined to consider the request for refund.

4.Admittedly, no interim protection has been obtained by the respondents. Though the provisions of Section 129DD do not expressly provide for seeking or grant of interim protection, such provision for interim protection is implicit in any provision for appeal or revision and this is a position settled by several decisions including a decision of this Court in the context of the Income Tax Act 1961, in the case of Paulsons Litho Works vs. Income-Tax Officer [208 ITR 676]. Thus, in cases where the Customs Department takes re-course to revision before the Government, it is incumbent upon them to also seek interim protection for retention of the assets seized by them at the original instance, if they so desire. Failure to do so would entitle the assessee in the respective cases to seek return/refund of the assets seized.

5.However, in the present case, learned counsel for the petitioners does not insist on any positive relief as indicated above, but would rest content if a direction is issued to the

Principal Commissioner (Revision Application) and Ex Officio Additional Secretary to Government of India, arrayed as R4, for speedy disposal of the revision applications.

6.Mr.Santhanaraman would state that a time frame of three (3) months may be fixed, within which time, he assures the Court, the petitioners will be heard and the applications disposed. Thus, a direction is issued to R4 to dispose the revision applications in F.Nos.16, 17, 18, 19 & 20/2018-(Prev. Refunds), pending on their file, within a period of twelve (12) weeks from today, after hearing the petitioners and in accordance with law.

7.These writ petitions are disposed in the aforesaid terms. No costs.

Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar

vs

To

1.Principal Commissioner of Customs,
Commissionerate-I,
Chennai Airport and Aircargo Complex,
New Custom House,
Meenambakkam, Chennai-600 027.

2.Joint Commissioner of Customs,
(Adjudication - Air),
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4.Principal Commissioner (Revision Application)
and Ex Officio Addl. Secretary to Govt. of India,
8th Floor, Centre-1, World Trade Centre,
Cuffe Parade,
Mumbai – 400 005.

+5cc to Mr.M.Santhanaraman, Advocate SR.No.24754, 24755, 24756, 24757, 24758

+5cc to Mr.B.Sathish Sundar, Advocate SR.No.24800, 24799, 24798, 24797, 24796

W.P. Nos.51, 55, 56, 58 & 60 of 2020

PA(CO)

GMY(29/06/2021)