IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.20860 of 2011
and
M.P.No.1 of 2011

The Commissioner of Customs,
Chennai Airport, Air Cargo Complex,
Meenambakkam, Chennai - 600 027. ... Petitioner

Vs.

1.Pitchai Karuppiah
2.The Revisional Authority,
Represented by Joint Secretary,
Ministry of Finance,
14, HUDCO Vishala Building,
New Delhi 110 060. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari, by quashing Order No.38/2011 dated 03.03.2011 passed by the Joint Secretary, Government of India, permitting re-export of the 624 grams of jewelery brought by the respondent, on payment of redemption fine of Rs.2,14,935/- together with personal penalty of Rs.50,000/- (as per order in appeal), and restore the order passed by the Additional Commissioner of Customs vide order in Original dated 28.04.2010 vide No.13/2010 ADC (Airport).

For Petitioner : Mr.A.P.Srinivas,
Senior Standing Counsel

For Respondents : Mr.A.Sayeedain Mohamed
for R1
No appearance for R2

O R D E R

In this writ petition, the petitioner has challenged the impugned order passed by the 2nd respondent Revisionary Authority permitting re-export of 624 gram of jewelry brought by the 1st respondent on payment of redemption fine of Rs.2,14,935/- with a personal penalty of Rs.50,002/- (as per the of the order in appeal) and to restore Order in Original No. 13/2010 ADC (Airport) dated 28.4.2010 passed by the Additional Commissioner of Customs vide.

2. There is no representation on behalf of the 2nd respondent. The 1st respondent is represented. Though elaborate arguments were made on merits, a submission was also to the effect that the impugned order that was passed by the concerned officer of the 2nd respondent as the Revisionary Authority have been set aside in several cases as the said officer was of the same rank as that of a Commissioner of Customs (Appeals) and therefore he could not have sat as a Revisionary Authority and passed the impugned order under the provisions of the Customs Act, 1962.

3. The learned counsel for the petitioner drew my attention to the decision of this court rendered on 09.10.20 20 in the case of Larsen and Toubro Ltd vs. The Revisionary Authority in WP No. 21906 of 2013 wherein the orders passed by the concerned officer sitting as the Revisionary Authority has been set aside and the case has been remitted back to the 1st respondent to pass a fresh order as a new officer having competency to sit as aRevisionary Authority has been appointed and thereby curing the defect.

4. There is no representation on behalf of the 2nd respondent. The learned counsel for the 1st respondent is also unable to confirm as to whether the officer who passed the impugned order was incompetent or not. Therefore, without expressing any opinion on the merits of the case, the impugned order is set aside and the case is remitted back to the 2nd respondent to pass a fresh order after hearing the petitioner with a caveat.

5. If the impugned order passed by the 2nd respondent was passed by an officer having appropriate qualification and competency, the 2nd respondent shall pass an order confirming the impugned order in the remand proceedings without any further deliberation.

6. On the other hand, if the 2nd respondent who passed the impugned order had lacked the competency, the case shall be re-heard on merits by the second respondent with a person having competence. Needless to state, before an order is passed by such officer of the 2nd respondent, the 1st respondent shall be heard in person or through his representative either physically or through video conference in view of the travel restrictions and inconveniences caused due to the prevalence of pandemic COVID 19.

7. Writ petition stands allowed in terms of the above observation. No costs. Consequently, connected

Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//
Sub Assistant Registrar

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To

The Join Secretary,
(Revisional Authority,)
Ministry of Finance,
14, HUDCO Vishala Building,
New Delhi 110 060.

+1cc to Mr.A.P.Srinivas, Advocate SR.5058

W.P.No.20860 of 2011
and
M.P.No.1 of 2011

KK(CO)
CB(25/02/2021)