IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2021

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P. No.10247 of 2020

Malabar Diamond Gallery Pvt Ltd.,
Represented by its Director Mr.Shafeekh V S,
New No.72, Old No.169, North Usman Road ,
T.Nagar, Chennai - 600 017. .. Petitioner

Vs.

1. The Additional Director General,
   Directorate of Revenue Intelligence,
   Chennai Zonal Unit, No.17, Gopala Krishna Road,
   T.Nagar, Chennai - 600 017.

2. The Commissioner of Customs,
   Seaport-Import, Chennai – III, Customs House,
   No.62 Rajaji Salai, Chennai - 600 001. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of **Mandamus** to direct the respondents to return the gold totally weighing 5541.92 grams seized vide mahazar dated 27.03.2013 in show cause notice F.No.VIII/48/06/2013-DRI dated 16.09.2013 immediately to the petitioner.

For Petitioner : Mr.Joseph Prabakar

For Respondents : Mr.V.Sundareswaran,

Senior Panel Counsel

O R D E R

The petitioner has sought a mandamus directing the respondents to return the gold weighing 5541.92 grams seized vide mahazar dated 27.03.2013 in show cause notice dated 16.09.2013, immediately to the petitioner.

2. The petitioner had earlier approached this Court in WP.No.18833 of 2013 seeking a writ of mandamus directing the respondents to release the gold weighing 5541.92 grams seized vide mahazar dated 27.03.2013. The aforesaid writ petition was disposed on 17.11.2014 issuing a direction to the 3rd respondent/Commissioner of Customs to adjudicate the claim made in the show cause notice dated 16.09.2013 subject to the condition that all the noticees should participate and co-operate with the adjudication. The exercise was to be completed as expeditiously as possible within six months.

3. A writ appeal was filed by the petitioner challenging the aforesaid order that came to be dismissed on 28.07.2016 by the Division Bench. The Bench at para-95 notes that the allegation against the petitioner is one of smuggling and as such, and in the light of this allegation, prima facie, the Bench was not inclined to order provisional release. No SLP has been filed by the petitioner challenging the order of the Bench that has attained finality. The

prayer of the petitioner in this writ petition is thus liable to be rejected straight away. Moreover, the prayer in the present writ petition is only a repetition of the prayer in W.P.No.18833 of 2013. When asked why, learned counsel for the petitioner would seek to distinguish the two prayers stating that the earlier prayer was in terms of Section 110(A) seeking provisional release pending adjudication, whereas the present prayer is for absolute return.

4. In my considered view, no legal distinction is made out between the two reliefs sought. Elaborate submissions are put forth in regard to the conduct of the respondents in suppressing material order passed by this Court that I refrain from adverting to, convinced as I am, that the relief sought for by the petitioner cannot be granted.

5. This writ petition is dismissed in the light of order of the Division Bench in W.A.No.377 of 2016 dated 28.07.2016. No costs.

22.01.2021

ska/vs

Index:Yes

Speaking order

Dr.ANITA SUMANTH, J.

ska/vs

To

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