IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.15564 of 2008

Kassim Musthafa ... Petitioner

Vs.

Union of India,
Represented by
The Collector of Customs and
Central Excise,
Chennai. ... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of Writ of Mandamus, to direct the respondent to return the Indian Origin Diamonds which were seized on 28.12.85 from the residence of Abu Backer and which is under the custody of the respondent from 28.12.85 to the petitioner.

For Petitioner : Mr.Hari Radhakrishnan

For Respondent : Mr.A.P.Srinivas
Senior Standing Counsel

O R D E R

The present writ petition has been filed for mandamus to direct the respondents to return diamonds that were seized on 28.12.1985 from the residence of one Abu Backer provisions of the Gold Control Act, 1968.

2.The case of the petitioner is that the petitioner was given a small consignment of Diamond of Indian origin by M/s. Mamta Gems and super Gems who had purchased from M/s. Hindustan Diamond Bombay. Government of India undertaking on approval basis which was seized illegally on 28.12.1985 from the custody of the said Abu Backer to whom the petitioner had handed over the Diamond for safe custody. It is submitted that petitioner along with the said Abu Backer and others were subjected to investigation and that a criminal case in EOCC No. 290 of 1989 was filed before the Additional Chief Metropolitan Magistrate, Egmore. It is further submitted that a parallel adjudication proceedings were initiated by the respondent's which culminated in Order in Original No. 1/2001 dated 18.12.2001.

3.Appearing on behalf of the petitioner learned counsel for the petitioner submits that against Order in Original No. 1/2001 dated 18.12.2001, the petitioner, the said Abu Backer and others had filed an appeal before the Customs, Excise and Service Tax Appellate Tribunal, Chennai. The Tribunal by Final Order No. 355, 356 and 357 of 2008 dated 17.4.2008 in C/124 of 2002; C/154 of 2002 and C/165 2002 allowed the appeal filed by the petitioner insofar as imposition fine of Rs.50,000/-.

4.It is further submitted that complaint against the petitioner in EOCC No. 290 of 1989 was also dismissed and the petitioner was exonerated of all the charges regarding of abetting in the alleged smuggling of the diamond contrary to law.

5.Heard learned counsel for the petitioner and respondent. I have perused the order dated 24.1.2008 passed by the Metropolitan Magistrate in EOCC No. 290 of 1989 and the order passed by the Customs, Excise and Service Tax Appellate Tribunal, Chennai in C/124 of 2002; C/154 of 2002 and C/165 2002 vide its Final Order No. 355, 356 and 357 of 2008 dated 17.4.2008. The Metropolitan Magistrate has ordered confiscation of the material objects the seized during investigation. The Customs, Excise and Service Tax Appellate Tribunal, Chennai in C/124 of 2002; C/154 of 2002 and C/165 2002 vide its Final Order No. 355, 356 and 357 of 2008 dated 17.4.2008 has merely exonerated the petitioner from fine imposed under Section 112 of the Customs Act, 1962.

6.It Is not clear on what basis the petitioner has filed the present writ petition. In absence of a valid challenge to the orders passed by the Metropolitan Magistrate in EOCC No. 290 of 1989 ordering satisfaction, the relief claim by the petitioner cannot be granted by this court under Article 226 of the Constitution of India. Similarly, the Final Order of the Customs, Excise and Service Tax Appellate Tribunal, Chennai in C/124 of 2002; C/154 of 2002 and C/165 2002 also does not come to the rescue of the petitioner in the endeavour for the prayer in this writ petition for release of the seized diamond which has been ordered to be confiscated. Therefore, I do not find any merits in the present writ petition.

7.Therefore, while dismissing the present writ petition, I give liberty to the petitioner to file appropriate representation with the Jurisdictional Commissioner of Customs explaining the case under which the petitioner seeks for release of the seized diamonds. If such application/representation is filed by the petitioner within a period of three months from date of receipt of this order, the Commissioner of Customs, shall pass appropriate orders on merits in accordance with law and dispose the representation of the petitioner.

8.Writ Petition stands disposed with the above observations. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

JAS

To

The Collector of Customs and
Central Excise,
Union of India,
Chennai.

Copy To:-

The Commissioner of Customs,
Chennai.

+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.13330
+1cc to Mr.Hari Radhakrishnan, Advocate, S.R.No. 12998

W.P.No.15564 of 2008

PL(CO)
TE(30/04/2021)