IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :08.09.2021

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.5028 of 2017
and
W.M.P.Nos.5313&5314 of 2017

K.H Mohamed Ismail (alias)
Kose Hajamohideen Mohamed Ismail ...Petitioner

Vs

The Additional Commissioner of Customs(Airport)
Office of the Additional Commissioner of Customs (Airport)
Room No.311, 3rd Floor,
“New Customs House”
Meenambakkam, Chennai- 600 027. ... Respondent

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India to issue of Writ of Prohibition, forbearing the respondent from any manner proceeding with the adjudication proceedings in F.No.OS.No.1366/2015-AIU-AIR, without issuing written Show Cause Notice under Section 124 of the Customs Act, to the petitioner.
(Prayer amended as per order dated 17.04.2017 in W.M.P.No.10010 of 2017 in W.P.No.5028 of 2017)

For Petitioner : Mr.N.Murali Kumaran
For M/s.MCGAN LAW FIRM

For Respondent : Mr.T.R.Senthil Kumar
Senior Standing counsel
[For Customs]

O R D E R

The Amended prayer in the Writ Petition is to forbear the respondent from any manner proceeding with the adjudication proceedings in F.No.OS.No.1366/2015-AIU-AIR, without issuing written Show Cause Notice under Section 124 of the Customs Act [hereinafter referred to as the 'Act'] to the petitioner.

2. The facts in nutshell are that on 23.12.2015, the petitioner arrived to Chennai Airport and the Gold metal in his possession was seized by the Customs Authorities. On the same date, the respondent contends that the petitioner / passenger has given in writing for waiver of Show Cause Notice to be issued by the Customs Department under Section 124 of the Customs Act. Based on the letter of waiver of Show Cause Notice given in writing by the petitioner / passenger, the Department contended that Show Cause Notice need not be issued in the case of the petitioner. The request of the petitioner for release of the gold was also rejected, as he has not declared under Section 77 of the Act. The petitioner filed Writ Petition in W.P.No.1142 of 2016 with a prayer to release of gold under Section 110 of the Customs Act. The High Court passed an order on 03.02.2016, directing the respondent to complete the adjudication within a period of 12 weeks and to decide the release of gold under Section 110 of the Act. On 15.03.2016, the petitioner was called upon for Personal Hearing and the writ petitioner again filed the second Writ petition in W.P. No.12123 of 2016, with the same request to release the gold under Section 110 of the Act. The High Court though not passed any interim order orally, instructed the Counsel not to proceed with the adjudication. At that point of time, the Writ petitioner filed third Writ Petition in W.P.No.41041 of 2016, to quash the proceedings initiated by the respondent to auction the seized gold metals. The High Court passed an order in the said Writ petition in W.P.No.41041 of 2016, considering all the grounds raised by the petitioner including the objection raised by the petitioner that the adjudication cannot be proceeded without issuing the Show Cause Notice as contemplated under Section 124 of the Act. The relevant paragraph of the said judgment in W.P.No.41041 of 2016 dated 20.12.2016 are extracted hereunder:

“8.It is in these circumstances that the submission made on behalf of the petitioner is, that, not only, is the impugned order factually erroneous, but is also, contrary to law as there can be no confiscation of the goods, i.e., gold bars without an adjudication order. It is further argued by the learned counsel for the petitioner that since no show cause notice was issued within the period of six months, as is the requirement under

Section 124 (a) of the Act, the seized goods, i.e., the gold bars are required to be released unconditionally to the petitioner under provisions of Section 110 (2) of the Act."

3. Considering the grounds raised by the petitioner regarding the letter of waiver given by the petitioner in the Airport for issuing Show Cause Notice, this Court passed the order as under:

"16.Accordingly, the communication dated 10.11.2016 is quashed. Respondents are, however, given liberty to conclude the adjudication with due expedition, though, not later than four (4) weeks from the date of receipt of a copy of this order. The respondents will, however, release the seized goods i.e., the gold bars to the petitioner on a bank guarantee being furnished, equivalent to 50% of the value of the seized goods, as indicated in the communication dated 10.11.2016."

4. Thus, the petitioner raised the point of non-issuance of Show Cause Notice under Section 124 of the Act in the earlier writ petition and the said issue was elaborately considered by this Court and the relief was granted in favour of the petitioner. Pursuant to the orders passed by this Court, the petitioner furnished 50% of the Bank Guarantee and seized gold metals were released.

5. Under these circumstances, the present Writ petition is filed again on the ground that the adjudications are to be deferred on the ground of non-issuance of Show Cause Notice under Section 124 of the Customs Act to the petitioner.

6. The learned Senior Standing Counsel contended that the respondent had followed the procedures as contemplated under the provisions of the Act as well as the Circulars issued by the Ministry. The Writ petitioner has already filed three petitions and the present writ petition is the fourth writ petition. The adjudication is stalled one way or other, despite the fact that the seized gold metals were already released. It is brought to the notice of this Court that five Personal Hearings were already granted to the writ petitioner and the adjudication is in progress. Thus, the Writ petition is to be rejected.

7. Under these circumstances, this Court is of the considered opinion that the ground raised in the present Writ Petition regarding the issuance of Show Cause Notice under section 124 of the Customs Act was adjudicated by this Court elaborately in W.P.No.41041 of 2016 and a finding was also given. This High Court has granted relief in favour of the petitioner and pursuant to the directions issued by this Court, the petitioner also furnished Bank Guarantee and accordingly, the entire seized gold metals were released by the authorities. This being the factum, it became unnecessary at this juncture to adjudicate the validity of the waiver letter given by the petitioner in the Airport at the time of seizure of gold and further, stall the adjudication process merely on that ground. Since the said ground was adjudicated by this Court and the relief was granted to the Writ Petitioner and the directions were implemented by the authorities, there is no other reason whatsoever to prolong the matter in further. This apart, the adjudication process is also in progress and the petitioner is directed to co-operate for the complete adjudication of the issues by availing the opportunities to be provided in the manner known to law. The respondent is directed to expedite the adjudication and conclude the same at the earliest possible time.

8. With these observations, the Writ Petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar

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To
The Additional Commissioner of Customs(Airport)
Office of the Additional Commissioner of Customs (Airport)
Room No.311, 3rd Floor,
“New Customs House”
Meenambakkam, Chennai- 600 027.

+1CC to Mr.T.R.Senthil Kumar, Advocate, SR.No. 45632
+1CC to M/s.McGan Law Firm, Advocate, SR.No. 45460

VG II(CO)
B.VC (30/09/2021)