IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2022

CORAM :

THE HON'BLE MR. JUSTICE R.MAHADEVAN
and
THE HON'BLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

W.A.No.824 of 2021

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

Versus

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/Respondents

Writ Appeal filed under Clause 15 of the Letters Patent, praying to set aside the order dated 22.01.2021 passed by the learned Judge in W.P.No.10247 of 2020.

Prayer in W.P. 10247/2020:
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 Appellant :Mr.Joseph Prabakar
For Respondents :Mr.V.Sundareswaran,
Standing Counsel

JUDGMENT

(Judgment of the Court was delivered by R.MAHADEVAN, J.)

The writ petitioner viz., M/s.Malabar Diamond Gallery Pvt. Ltd., is the appellant herein and the order of the learned Judge dated 22.01.2021 passed in W.P.No.10247 of 2020, is under challenge in this writ appeal.

2.According to the appellant, they are engaged in the business of selling gold and diamond jewellery for the past two decades. On 27.03.2013, based on the voluntary statement of one Mahaveer that he had sold smuggled Singapore gold jewellery to the appellant, the business premises of the appellant was inspected by the officials of the first respondent and gold weighing 5541.92 gms valued at Rs.1,54,28,705/- @ Rs.2,084/- per gram, was seized on the premise that they are liable for confiscation under section 111 of the Customs Act, 1962, (in short, "the Act"). Subsequently, the appellant preferred WP.No.18833 of 2013, seeking provisional release of the seized goods. By order dated 17.11.2014, the said writ petition was disposed of, directing the Commissioner of Customs (AIR), Chennai, to adjudicate the claim made in the show cause notice dated 16.09.2013 subject to the condition that all the 19 noticees should participate and co-operate with the adjudication. Challenging the said order, the appellant filed an appeal in WA.No.377 of 2016, which was dismissed, by judgment dated 28.07.2016. Thereafter, stating that two of the co-noticees viz., R.Mahaveer Pipada and Ashish Mundhra, obtained an interim order dated 29.04.2014 in MP.Nos.3 and 3 of 2014 in WP.Nos.3856 and 3857 of 2014 for release of the gold seized, the appellant filed WP.No.10247 of 2020 seeking a direction for return of the seized gold under section 110(2), since adjudication has not been completed even after seven years. The said writ petition was dismissed, in the light of the order of the Division Bench dated 28.07.2016 in WA.No.377 of 2016, by order dated 22.01.2021, which is impugned herein.

3.At the outset, this court is not inclined to test the correctness of the order impugned herein, as the learned Judge, after analysing the factual matrix involved in the case, has correctly dismissed the claim of the appellant, on the ground that no SLP was filed challenging the order of the Division Bench in WA.No.377 of 2016, which has attained finality; and the prayer made was only a repetition of the prayer in WP.No.18833 of 2013 and no legal distinction was made out between the two reliefs sought.

4.At this juncture, the learned counsel for the appellant submitted that the appellant is ready and willing to appear before the adjudicating authority, for adjudication; and that, the goods seized are lying with the department from the year 2013 onwards and hence, appropriate direction may be issued to them for early completion of the adjudication proceedings. It is also submitted that the appellant has already made a request to release the goods on payment of the amount demanded, but the same is pending without any consideration.

5.On the other hand, the learned standing counsel appearing for the respondents, on written instructions dated 25.03.2022 from the Superintendent (CAU-CH-IV), submitted that the adjudication proceedings would be completed within a period of three months. It is further submitted that the authority concerned would consider the application of the appellant seeking release of the gold seized on payment of any amount demanded, if not considered so far, and pass appropriate orders on merits and in accordance with law.

6.This court, considering the facts and circumstances of the case and taking note of the submissions made by the learned counsel on either side, directs the adjudicating authority to complete the adjudication and pass appropriate orders, on merits and in accordance with law, after affording an opportunity of personal hearing to the appellant, as expeditiously as possible, in any event, not later than 15.06.2022. This writ appeal stands disposed of accordingly. No costs.

Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar

To
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.

+1 CC to Mr.V.Sundareswaran, Advocate sr 20542.
+1 CC to Mr. Joseph Prabakar, Advocate sr 20540.

SSD(CO)
SP(10/05/2022)