BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **28.02.2022**
CORAM:
THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.(MD) Nos.2861 to 2863 of 2022
and
W.M.P.(MD) Nos.2493 to 2498 of 2022

Vinistro ... Petitioner in W.P.(MD) No.2861 of 2022

Antony Suganth ... Petitioner in W.P.(MD) No.2862 of 2022

Luyis Alosiyas ... Petitioner in W.P.(MD) No.2863 of 2022

/vs./

1.The Commissioner of Customs(Appeals)
No.1, Williams Road,
Cantonment,
Trichirappalli 620 001.

2.The Additional Commissioner of Customs (Preventive),
Customs Division,
Bharathi Nagar,
Mandapam Road,
Ramanathapuram 623 503.

3.The Additional Commissioner of Customs,
O/o. the Commissioner of Customs,
No.1, Williams Road,
Cantonment,
Trichirappalli.

... Respondents in all W.Ps.,

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 2nd respondent in C.No.VIII/10/05/2021.Cus.Adjn. dated 01.04.2021 and quash the same as illegal and consequently direct the 2nd respondent to adjudicate the same afresh after providing sufficient opportunities to the petitioners.

For Petitioners in all W.Ps., : Mr.T.Veerakumar

For Respondents in all W.Ps., : Mr.R.Aravindan Standing Counsel

COMMON ORDER

These writ petitions have been filed for a Certiorarified Mandamus calling for the records relating to the impugned order dated 01.04.2021 of the 2nd respondent in C.No.VIII/10/05/2021.Cus.Adjn. and quash the same as illegal and consequently direct the 2nd respondent to adjudicate the same afresh after providing sufficient opportunities to the petitioners.

2.The facts of the case indicate that the petitioners appear to have involved themselves in smuggling of 35 numbers of gold biscuits weighing totally 3500.380 gms of 24 Karat of Foreign Origin valued at Rs.1,49,78,126/-. It is the specific case of the petitioners that the petitioners were arrested and thereafter, released at the expiry of statutory period and were lodged in the Refugee Camp, Trichy.

3.It is the further case of the petitioners that in the Refugee Camp, Trichy, statements were recorded from the petitioners and thereafter, a show cause notice dated 03.02.2021 bearing Ref.C.No.VIII/10/05/2021 Cus.Adj., was issued. It is submitted that the petitioners could not file a reply in time and not participated in the personal hearings. It is further submitted that the personal hearing fixed on 09.03.2021 at 03.00 pm., through video conference was also not facilitated by the Refugee Camp. It is therefore submitted that there is a clear violation of principles of natural justice and since the impugned order seeks penalty of Rs.75,00,000/- each from the petitioners, the petitioners sought for the aforesaid relief.

4.Opposing the prayer, the learned Standing Counsel for the respondents submits that the writ petition is devoid of merits, inasmuch as the petitioners were served with the show cause notice bearing Ref.C.No.VIII/10/05/2021 Cus.Adj., dated 03.02.2021 and that after the show cause notice was issued, the petitioners were also issued with a personal hearing notice dated 04.03.2021, wherein the Office of the respondents had clearly stated that the personal hearing was fixed at 03.00 pm., on 09.03.2021 and that a consent letter was to be sent by the petitioners to the addressee, namely, the Superintendent, Ramnad, on or before 08.03.2021 for further process.

5.It is further submitted that the impugned order is dated 01.04.2021 and long after the service of the above order, the present writ petitions have been filed on 09.02.2022. It is submitted that the statutory period for filing an appeal under Section 128 of the Customs Act, 1962, is 60 days + 30 days. It is further submitted that the petitioners are mandatorily required to pre-deposit 7.5% of the penalty, in terms of Section 129 of the Customs Act, 1962.

6.The learned Standing Counsel for the respondents submits that the period of limitation prescribed under Section 128 of the Customs Act, 1962 cannot be altered. In this connection, the learned Standing Counsel for the respondents has placed reliance on the decisions of the Hon'ble Supreme Court in Civil Appeal No.2413 of 2020 ***(Assistant Commissioner (CT), LTU, Kakinada and others Vs. M/S.Glaxo Smith Kline Consumer, Health Care Limited)***, dated 06.05.2020. A reference was made to paragraph Nos.14 and 17 from the said judgment, wherein it has been observed as under:-

> *"14.The Petitioner faced with this unfortunate situation, filed an appeal under Section 31 of the VAT Act on 24.9.2018 on the bona fide belief that there are good grounds for condonation of the delay since the Petitioner cannot suffer for the errors committed by one of its employees.*
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> *.............*
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> *.............*
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> *17.The petitioner has lost the appellate remedy by efflux of time. It does not mean that the Petitioner should be left remediless. The petitioner submits that a full Bench of this Hon'ble Court in Electronics Corporation of India Limited (Writ Petition Nos. 9482 and 9485 of 2017, dated 13.3.2018, dealing with similar situation, under Central Excise Act, held that even if the appeal time under the Act has expired, it does not prevent the assessee from preferring a Writ Petition under Article 226 of the Constitution."*

7.I have considered the arguments advanced by the learned counsel for the petitioner and the learned Standing Counsel for the respondents.

8.No doubt, the period of limitation has expired in the present case. The facts remains that the petitioners are still under incarceration in the Refugee Camp, Trichy. Unless the Refugee Camp provides for legal aid to the petitioners, it may not be possible for the petitioners to defend themselves in the proceedings initiated pursuant to the show cause notice dated 03.02.2021.

9.In this case, the petitioners are not challenging the confiscations that has been ordered. They are only challenging the imposition of penalty under Section 112 (b) of the Customs Act, 1962. Though the period of limitation under Section 128 of the Customs Act, 1962 has expired, considering the fact that the petitioners appear to be the fishermen, who have been engaged by the other accused to carry on the smuggled goods, I am inclined to quash the impugned order, insofar the imposition of penalty is concerned. The case is remitted back to the 2nd respondent to pass a speaking order on merits and in accordance with law, insofar as the petitioners herein are concerned, after giving due opportunities to the petitioners to file reply to the show cause notice dated 03.02.2021 bearing Ref.No. C.No.VIII/10/05/2021-Cus.Adj.

10.These writ petitions are allowed, in terms of the above observations. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

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No.1, Williams Road,
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2.The Additional Commissioner of Customs (Preventive),
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O/o. the Commissioner of Customs,
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+1 CC to M/s.T.VEERAKUMAR, Advocate (SR-9376[F] dated 01/03/2022)

W.P.(MD) Nos.2861 to 2863 of 2022
28.02.2022

RK(25/03/2022) 4P 5C