BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.03.2022

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P(MD).Nos.3456, 3460, 3469 and 3557 of 2022
and
W.M.P(MD).Nos.3033 to 3038, 3042, 3043,
3046, 3103 to 3105 of 2022

W.P.(MD).No.3456 of 2022

A.Krishnamoorthy ... Petitioner

Vs.

1.The Commissioner of Customs,
No.1, Williams Road,
Cantonment,
Trichy-620 001.

2.The Joint/Additional Commissioner of Customs (Airport),
No.1, Williams Road, Cantonment,
Trichy-620 001.

3.The Superintendent of Customs,
Air Intelligence Unit,
Trichy Airport,
Trichy-620 007. ...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the Detention Receipt made by the third respondent herein in D.R.No.1530/2021, dated 24.12.2021, drawn at Trichy International Airport, Trichy, and quash the same as illegal and direct the respondents herein to Release/Return the detained 4 numbers of gold bangles, weighing 200 grams, covered by D.R.No.1530/2021, dated 24.12.2021, drawn at Trichy International Airport, Trichy, at Concessional Rate of Duty since, the petitioner being an eligible passenger on payment of duty as applicable for the passenger staying abroad for more than six months.

For Petitioner : Mr.A.K.Jayraj
For Respondents : Mr.R.Aravindan
Senior Standing Counsel

W.P.(MD).No.3460 of 2022

N.Karthikeyan ... Petitioner

Vs.

1.The Commissioner of Customs,
No.1, Williams Road,
Cantonment,
Trichy-620 001.

2.The Joint/Additional Commissioner
of Customs (Airport),
No.1, Williams Road, Cantonment,
Trichy-620 001.

3.The Superintendent of Customs,
Air Intelligence Unit,
Trichy Airport,
Trichy-620 007. ...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the Detention Receipt made by the third respondent herein in D.R.No.1533/2021, dated 24.12.2021, drawn at Trichy International Airport, Trichy, and quash the same as illegal and direct the respondents herein to Release/Return the detained 4 numbers of gold bangles, weighing 199.2 grams, covered by D.R.No.1533/2021, dated 24.12.2021, drawn at Trichy International Airport, Trichy, at Concessional Rate of Duty since, the petitioner being an eligible passenger on payment of duty as applicable for the passenger staying abroad for more than six months.

For Petitioner : Mr.A.K.Jayraj
For Respondents : Mr.R.Aravindan
Senior Standing Counsel

W.P.(MD).No.3557 of 2022

M.Udayappan ... Petitioner

Vs.

1.The Commissioner of Customs,
No.1, Williams Road,
Cantonment, Trichy-620 001.

2.The Joint/Additional Commissioner
of Customs (Airport),
No.1, Williams Road, Cantonment,
Trichy-620 001.

3.The Superintendent of Customs,
  Air Intelligence Unit,
  Trichy Airport,
  Trichy-620 007. ...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the Detention Receipt made by the third respondent herein in D.R.No.1535/2021, dated 24.12.2021, drawn at Trichy International Airport, Trichy, and quash the same as illegal and direct the respondents herein to Release/Return the detained 4 numbers of gold bangles, weighing 199.7 grams, covered by D.R.No.1535/2021, dated 24.12.2021, drawn at Trichy International Airport, Trichy, at Concessional Rate of Duty since, the petitioner being an eligible passenger on payment of duty as applicable for the passenger staying abroad for more than six months.

For Petitioner : Mr.A.K.Jayraj
For Respondents : Mr.R.Aravindan
Senior Standing Counsel

W.P.(MD).No.3469 of 2022

T.Punniyarasu ... Petitioner

Vs.

1.The Commissioner of Customs,
  No.1, Williams Road,
  Cantonment,
  Trichy-620 001.

2.The Joint/Additional Commissioner
  of Customs (Airport),
  No.1, Williams Road, Cantonment,
  Trichy-620 001.

3.The Superintendent of Customs,
  Air Intelligence Unit,
  Trichy Airport,
  Trichy-620 007. ...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the Detention Receipt made by the third respondent herein in D.R.No.1522/2021, dated 24.12.2021, drawn at Trichy International Airport, Trichy, and quash the same as illegal and direct the respondents herein to Release/Return the detained 4 numbers of gold bangles, weighing

200.9 grams, covered by D.R.No.1522/2021, dated 24.12.2021, drawn at Trichy International Airport, Trichy, at Concessional Rate of Duty since, the petitioner being an eligible passenger on payment of duty as applicable for the passenger staying abroad for more than six months.

For Petitioner : Mr.A.K.Jayraj

For Respondents : Mr.R.Aravindan
Senior Standing Counsel

COMMON ORDER

In these writ petitions, the respective petitioners have challenged the respective seizure memo/Detention Receipts, dated 24.12.2021. The respective petitioners in these writ petitions claim that they were employed in Singapore and were visiting India in connection with the wedding in their respective family and had purchased gold bangles.

2. The case of the petitioners is that they were employed in Singapore for more than two years and therefore they were not required to pay customs duty on their personal belongings. However, the respondents 2 and 3 seized the gold and issued the seizure memo and issued Detention Receipt. It is submitted that under similar circumstances, the Court has allowed the release of the seized gold/ornaments on payment of 50% of the duty in terms of the order of this Court in W.P.No.1421 of 2011, dated 28.02.2011 as modified by an order, dated 01.04.2011 in W.A.No.582 of 2011 in the case of import by one T.Elavarasan. It is further submitted that the review against the order of the Division Bench in W.A.No.582 of 2011was also dismissed vide order, dated 25.04.2011 and a further appeal before the Hon'ble Supreme Court was also dismissed. It is therefore submitted that the respective petitioners are entitled to clear for the seized gold on payment of 50% of the customs duty.

3. The learned counsel for the petitioner has also drawn the attention of this Court to few other decisions of this Court as detailed below:

(i) In **Barakathnisa Vs The Principal Commissioner of Customs, Chennai and others** in W.P.(MD).No.5148 of 2018, dated 20.04.2018.

(ii) **The Commissioner of Customs and others Vs Tajudeen** in W.A.(MD).No.1261 of 2021, dated 11.10.2018.

(iii) **The Commissioner of Customs and others Vs Hasina Balkis** in W.A.(MD).No.1478 of 2018, dated 29.10.2018.

(iv) **The Principal Commissioner of Customs, Chennai and others Vs Palaniappan** in Review Application No.46 of 2016 in W.P.No.2968 of

2016, dated 07.12.2020.

Citing the above decisions, the learned counsel for the petitioners submitted that there is a consistent view of this Court to release of the seized gold ornaments, which are seized at the time of emigration.

4. Opposing the prayer, the learned Senior Standing Counsel for the respondents submits that the petitioners had voluntarily given a statement on 24.12.2021, that the imported gold were purchased for being sold to the third party and therefore, there was a clear intention to evade customs duty. It is further submitted that these petitioners have also given a letter, dated 24.12.2021 and requested the respondents to adjudicate the case without issuing show cause notice and that the adjudication process is in progress and appropriate orders will be passed in due course. It is submitted that without awaiting for such proceedings to be completed, the respective petitioners have filed these writ petitions.

5. I have considered the arguments advanced by the learned counsel for the petitioners and the learned Senior Standing Counsel for the respondents.

6. Though the learned counsel for the petitioners submits that these petitioners are not connected and had travelled independently, there is too much of coincidence as all them had carried gold bangles and the reason given is marriage in their family, the weight of the gold bangles carried by each of the petitioners and the reasons given in the affidavit filed in support of the writ petitions are almost identical except in the case of the petitioner in W.P.(MD).No.3469 of 2022. *Prima facie* it appears that they were working in tandens. Paragraph 3 of the writ petitions filed in support of W.P.(MD).Nos.3456, 3460 and 3557 of 2022 are read identical, they are reproduced below.

In W.P.(MD).No.3456 of 2022

"The petitioner submit that, a marriage was fixed to the petitioner's sister in Tamilnadu and for the marriage, the petitioner had puchased four gold bangles Viz., 200 grams in Sinapore as per the invoice. The petitioner submit that, after the above purchase of the gold jewellery viz., four bangles in Singapore, the petitioner arrived in Trichy Airport on 24.12.2021 vide Air India Express IX 681. Immediately on his arrival, he had declared before the Trichy Airport Customs Officers about the possession of the above four gold bangles Viz., 200 grams totally. The above officers without accepting the same had taken his passport and asked him to wait for more than six hours on the same

day in Airport. Thereafter, the above officers had enquired and the petitioner had informed the above officer that, the petitioner is coming back to India after two years and the above gold bangles were puchased by the petitioner vide the invoice furnished and the above gold jewellery were also purchased by the petitioner's hard earned money in Singapore."

In W.P.(MD).No.3460 of 2022

"The petitioner submit that, a marriage was fixed to the petitioner's sister in Tamilnadu and for the marriage, the petitioner had puchased four gold bangles Viz., 199.2 grams in Sinapore as per the invoice. The petitioner submit that, after the above purchase of the gold jewellery viz., four bangles in Singapore, the petitioner arrived in Trichy Airport on 24.12.2021 vide Air India Express IX 681. Immediately on his arrival, he had declared before the Trichy Airport Customs Officers about the possession of the above four gold bangles Viz., 199.2 grams totally. The above officers without accepting the same had taken his passport and asked him to wait for more than six hours on the same day in Airport. Thereafter, the above officers had enquired and the petitioner had informed the above officer that, the petitioner is coming back to India after two years and the above gold bangles were puchased by the petitioner vide the invoice furnished and the above gold jewellery were also purchased by the petitioner's hard earned money in Singapore."

In W.P.(MD).No.3557 of 2022

"The petitioner submit that, a marriage was fixed to the petitioner's sister in Tamilnadu and for the marriage, the petitioner had puchased four gold bangles Viz., 199.7 grams in Sinapore as per the invoice. The petitioner submit that, after the above purchase of the gold jewellery viz., four bangles in Singapore, the petitioner arrived in Trichy Airport on 24.12.2021 vide Air India Express IX 681. Immediately on his arrival, he had declared before the Trichy Airport Customs Officers about the possession of the above four gold bangles Viz., 199.7 grams totally. The above officers without accepting the same had taken his passport and asked him to wait for more than six hours on the same day in Airport. Thereafter, the above officers had enquired and the petitioner had informed the above officer that, the petitioner is coming back to India after two years and the above gold bangles were puchased by the petitioner vide the invoice furnished and the above gold jewellery were also purchased by the petitioner's hard earned money in Singapore."

7. The averments in Paragraph 3 of the W.P.(MD).No.3469 of 2022 reads as under:

> *"The petitioner submit that, the petitioner had purchased 4 gold bangles Viz.,200.9 grams in Singapore for his wife as per the invoice. The petitioner submit that, after the above purchase of the gold jewellery viz., four gold bangles in Singapore, the petitioner arrived in Trichy Airport on 24.12.2021 Vide Air India Express IX 681. Immediately on his arrival, he had declared before the Trichy Airport Customs Officers about the possession of the above four gold bangles viz.,200.9 grams totally. The above officers without accepting the same had taken his passport and asked him to wait for more than five hours on the same day in Airport. Thereafter, the above officers had enquired and the petitioner had informed the above officer that, the petitioner is coming back to India after two years and the above gold bangles were purchased by the petitioner vide the invoice furnished and the above gold jewellery were also purchased by the petitioner's hard earned money in Singapore."*

8. The weight of gold bangles imported by the petitioners are almost identical. The value is also similar as detailed below:

Sl. No.	Petitioner	W.P.(MD). No.	Description of the goods	Total Weight (in grams)	Value of the goods (in rupees)	Arrival Date
1.	N.Karthikeyan	3460/2022	4 Gold Bangles	199.2	8,83,566.96	24.12.2021
2.	T.Punniyarasu	3469/2022	4 Gold Bangles	200.9	8,91,107.44	24.12.2021
3.	M.Udaiyappan	3557/2022	4 Gold Bangles	199.7	8,85,784.75	24.12.2021
4.	A.Krishnamoorthy	3456/2022	4 Gold Bangles	200.0	8,87,115.42	24.12.2021

9. As mentioned above, there is too much of co-incidence. All the four petitioners have purchased gold bangles weighing identically. The reasons given are also almost similar. However, it is noticed that the consistent view of this Court in all the writ petitions cited by the learned counsel for the petitioners indicate that gold ornaments can be released subject to the payment 50% of the customs duty payable. It is not, however, clear whether the petitioners have returned back to Singapore in connection with the avocation in Singapore. This would require a detailed adjudication by the authorities under the Customs Act. Under these circumstances, I am inclined to dispose of these writ petitions by directing the respective petitioners to deposit 50% of the Customs duty payable as

has been ordered in all these cases. Considering the fact that there appears to be pattern in imports by all the four persons and that they were perhaps acting in concert for a third party, I am also inclined to add additional conditions by directing the petitioner to furnish the bank guarantee for the balance 50% of the duty.

10. In the result, these writ petitions are disposed of by directing the respective petitioners to pay 50% of customs duty in cash and furnish 50% security in the form of bank guarantee for the balance 50% of the customs duty. On production of such bank guarantee and payment of duty, the seized gold bangles are directed to be released forthwith. The respondents are directed to complete the adjudication proceedings within a period of six months from the date of receipt of copy of this order. The petitioners are directed to co-operate with the respondents. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

1.The Commissioner of Customs,
No.1, Williams Road,
Cantonment, Trichy-620 001.

2.The Joint/Additional Commissioner
of Customs (Airport),
No.1, Williams Road, Cantonment, Trichy-620 001.

3.The Superintendent of Customs,
Air Intelligence Unit,
Trichy Airport, Trichy-620 007.

+4 CC to M/s.A.K.JAYARAJ, Advocate (SR-15627 to 15630[F] dated 31/03/2022)

W.P(MD).Nos.3456, 3460,3469 and 3557 of 2022
30.03.2022

RD(08.04.2022) 8P 8C