



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED: 01.04.2022**

**CORAM:**

**THE HONOURABLE MR.JUSTICE C.SARAVANAN**

**W.P. (MD) Nos.4730, 4734 and 4736 of 2021**

**and**

**W.M.P. (MD) Nos.3840, 3842, 3845, 3847, 3849 and 3851 of 2021**

S.Hyder Khan ... Petitioner in W.P.(MD) No.4730 of 2021

S.Salman Khan ... Petitioner in W.P.(MD) No.4734 of 2021

A.Mohammed Farvesh ... Petitioner in W.P.(MD) No.4736 of 2021

/vs./

1.The Additional Commissioner of Customs,  
Office of the Commissioner of Customs (Preventive),  
No.1, Williams Road,  
Cantonment,  
Tiruchirappalli 620 002.

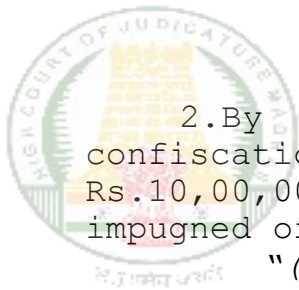
2.The Airport Authority of India (AAI),  
Thiruchirappalli Airport,  
Trichy. ... Respondents in all W.Ps.,

**COMMON PRAYER:** Writ Petitions filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records in order No.135/2020 dated 29.10.2020 on the file of the respondent herein and quash the same as illegal and direct the respondent to conduct fair enquiry after furnishing the relevant CCTV footage and after granting cross examinations to secure the ends of justice.

For Petitioner  
in all W.Ps., : Mr.S.Zakirhussain  
For R1  
in all W.Ps., : Mr.B.Vijay Karthikeyan  
Senior Standing Counsel  
For R2  
in all W.Ps., : C.Gotwin

**COMMON ORDER**

The petitioners have challenged the impugned order in Original No.135 of 2020 dated 29.10.2020 passed by the 1<sup>st</sup> respondent/the Additional Commissioner of Customs, Tiruchirappalli.



2.By the impugned order, the 1<sup>st</sup> respondent has ordered confiscation of the seized goods and has also imposed penalty of Rs.10,00,000/- each on the petitioners. Relevant portion from the impugned order reads as under:-

"(iii) I impose a penalty of Rs.10,00,000/- (Rupees Ten Lakhs only) under Section 112(b) of the Customs Act, 1962 on Shri.A.Mohamed Farvesh and appropriate the cash security amount of Rs.10,000/- paid towards penalty amount; and

(iv) I impose a penalty of Rs.10,00,000/- (Rupees Ten Lakhs only) under Section 112(b) of the Customs Act, 1962 on Shri.S.Hyder Khan and appropriate the cash security amount of Rs.10,000/- paid towards penalty amount; and

(v) I impose a penalty of Rs.10,00,000/- (Rupees Ten Lakhs only) under Section 112(b) of the Customs Act, 1962 on Shri.S.Salman Khan and appropriate the cash security amount of Rs.10,000/- paid towards penalty amount; and

....."

3.By the impugned order, the 1<sup>st</sup> respondent has declined to order redemption of seized goods. It is the specific case of the petitioners in these writ petitions that the impugned order has been passed in gross violation of principles of natural justice, inasmuch as the statement admitting the alleged offence was retracted on 19.06.2019 within 5 days from 14.06.2019 and therefore, the impugned order imposing penalty absolutely confiscating the imported goods is liable to be interfered.

4.It is further submitted that the respondents have used stock witnesses and therefore, the statement of such witnesses cannot be relied upon and therefore, the impugned order is liable to be quashed. It is further submitted that despite repeated requests to produce these Mahazar witnesses for cross-examination, the respondents have refused to produce such witnesses for cross-examination. That apart, the CCTV footage showing the attempt of the petitioners to smuggle the goods has also not been produced and therefore, on this score also, the impugned order is liable to be quashed.

5.The learned counsel for the petitioners has placed reliance on the decision of the Hon'ble Supreme Court in Criminal Appeal No.553 of 2008 (**Baldev Singh Vs. State of Punjab**) dated 06.05.2009 to state that the evidence of stock witnesses cannot be relied upon.

6.The learned counsel for the petitioners has relied upon the decision of the Hon'ble Kerala High Court in the case of **Ummer Abdulla Vs. Commr. of C.Ex., Cus. and Service Tax, Calicut** reported in **2019 (367) E.L.T. 181(Ker)** and the decision of the Tribunal in O.A.No.060/001099/2015 (**Surjit Singh Chhabra Vs. Union of India**) dated 02.02.2017 to state that failure to allow cross-examination would result in manifest violation of principles of natural justice



and therefore on this score also, the impugned order has to go. That apart, the learned counsel for the petitioners has relied on the following decisions:-

- " i) *In Manek Chemicals Private Limited Vs. Union of India*, Gujarat High Court dated 23.10.2015
- ii) *In Malela Seetharmaiah and another Vs. State of Andhra Pradesh* reported in AIR 1989 SC 421
- iii) *In Ummer Abdulla Vs. Commr.of C.Ex., Cus and Service Tax, Calicut*, reported in 2019 (367) E.L.T. 181 (Ker).
- iv) *In Civil Appeal No.5673 of 2008 (Mariama Roy Vs. Indian Bank and others)* dated 16.09.2008.
- v) *In Civil Writ Petition No.1697 of 2016 (Him Logistics Private Limited Vs. Principal Commissioner of Customs)* dated 26.02.2016."

7.Opposing the prayer, the learned Standing Counsel for the 1<sup>st</sup> respondent submits that the petitioners have an alternate remedy. It is submitted that the provisions of the Indian Evidence Act, 1872 are not applicable in the quasi judicial proceedings. It is further submitted that there is no necessity either for giving the CCTV footage to the petitioner or permitting the petitioner to cross-examine the Mahazar witnesses as the petitioners had admittedly attempted to smuggle the goods. In this connection a reference was made to Paragraph No.3 from the decision of the Hon'ble Supreme Court in the case of **Surjeet Singh Chhabra Vs. Union of India** reported in **1997 (89) E.L.T. 646(S.C)**, which reads as under:-

"3.It is true that the petitioner had confessed that he purchased the gold had brought it. He admitted that he purchased the gold and converted it as a Kara. In this situation, bringing the gold without permission of the authority is in contravention of the Customs Duty Act and also FERA. When the petitioner seeks for cross-examination of the witnesses who have said that the recovery was made from the petitioner, necessarily an opportunity requires to be given for the cross-examination of the witnesses as regards the place at which recovery was made. Since the dispute concerns the confiscation of the jewelry, whether at conveyor belt or at the green channel, perhaps the witnesses were required to be called. But in view of confession made by him, it binds him and, therefore, in the facts and circumstances of this case the failure to give him the opportunity to cross-examine the witnesses is not violative of principle of natural justice. It is contended that the petitioner had retracted within six days from the confession. Therefore, he is entitled to cross-examine the panch witnesses before the authority takes a decision on proof of the offence. We find no force in this contention. The Customs officials are not police officers. The confession, though retracted, is an admission and binds the petitioner. So



*there is no need to call panch witnesses for examination and cross-examination by the petitioner."*

8.The learned Standing Counsel for the 1<sup>st</sup> respondent further submits that at best the petitioners can be directed to workout their remedy before the Appellate Commissioner in terms of Section 129 of the Customs Act, 1962 and therefore, the learned Standing Counsel for the 1<sup>st</sup> respondent prays for dismissal of the writ petitions.

9.The learned counsel for the 2<sup>nd</sup> respondent submits that the CCTV in the Airports is for the purposes enumerated in Bureau of Civil Aviation Security circular No.33/2003 dated 25.11.2003. Monitoring of CCTV by the Airport Security Unit (CISF-State Police) is only meant for security of passengers and the Aircraft. It is submitted that the recorded video grab/data in the cassettes are retained only for a period of one month to allow any of concerned agency to review the lapses in case of need from the security point of view. Thereafter, they are erased. It is therefore submitted that the CCTV footage is not available and cannot be produced. He therefore submits that the recorded video grab/data is not available.

10.I have considered the arguments advanced by the learned counsel for the petitioners, learned Senior Standing Counsel for the 1<sup>st</sup> respondent and the learned counsel for the 2<sup>nd</sup> respondent.

11.Though the learned counsel for the petitioners has relied on several decisions, this Court in the case of **Jet Unipex Vs. Commissioner of Customs, Chennai** reported in **2020 (373) E.L.T. 649 (Mad)**., considered the scope of statements of witnesses and circumstances, under which such statement can be relied. The relevant portion from the said judgment reads as under:-

*"73.In the light of the above discussions, I find no merits in the present writ petition. I therefore, dismiss the above writ petitions with the following observation:-*

*i. The 1st respondent is directed to complete the adjudication proceedings within a period of 9 months from date of receipt of this order since the dispute pertains to import made by the petitioner between 2010 and 2013;*

*ii. It is for the 1st respondent to take a call as to whether it proposes to solely rely on the statements recorded under section 108 of the Customs Act, 1962 for confirming the demand in which case, the 1st respondent shall produce such persons for cross examination by the petitioners;*

*iii. On the other hand, if reliance is placed on independent evidence gathered by the officers of the 2nd respondent, the 1st respondent need not issue summons to the*



persons who statements were recorded under section 108 of the Customs Act, 1962.

iv. At the same time, the 1st respondent is not governed by strict rules of evidence. The 1st respondent shall be governed by preponderance of probability and Customs Valuation Rules, 2007 read with Section 14 of the Customs Act, 1962.

v. Needless to state, the petitioners shall be given an opportunity to file their final reply.

vi. Petitioner shall also be entitled to file their written representation/notes after the conclusion of the personal hearing by the 1st respondent.

vii. The 1st respondent may set time limit for completion of adjudication proceedings with the aforesaid period."

12. Under these circumstances, I am inclined to quash the impugned order dated 29.10.2020 of the 1<sup>st</sup> respondent and remit the case back to the 1<sup>st</sup> respondent to pass a speaking order after considering the paragraph No.73 of the aforesaid decision (referred supra) of this Court. Appropriate orders shall be passed by the 1<sup>st</sup> respondent within a period of 3 months from the date of receipt of a copy of this order.

13. These writ petitions stand disposed of, in terms of the above observations. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (RTI)

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Sub Assistant Registrar(CS)

Mm

TO

1. The Additional Commissioner of Customs,  
Office of the Commissioner of Customs (Preventive),  
No.1, Williams Road,  
Cantonment,

<https://hcservices.hcourtsonline.gov.in/hcsportal> 620 002.



2.The Airport Authority of India (AAI),  
Thiruchirappalli Airport,  
Trichy.

+3 CC to M/s.C.GODWIN, Advocate ( SR-16022, 16023 & 16024[F]  
dated 01/04/2022 )

**W.P. (MD) Nos.4730, 4734 and 4736 of 2021**  
**01.04.2022**

NSN(CO)  
GC(25.04.2022) 6P 6C