BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 01.03.2022

PRONOUNCED ON : 14.06.2022

CORAM

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

W.P.(MD).No.26438 of 2019

Thirumurugan Durairaj ... Petitioner

vs.

1. The Principal Commissioner & Ex-Officio
Additional Secretary to the Government of India,
Ministry of Finance (Department of Revenue),
8th Floor, World Trade Centre,
Centre-I, Cuffe Parade,
Mumbai – 400 005.

2. The Additional Commissioner of Customs (Airport),
Cochin International Airport Limited,
Nedumbassery, Custom House,
Cochin. .. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the first respondent herein the Principal Commissioner & Ex-Officio Additional Secretary to the Government of India, Ministry of Finance (Department of Revenue), Mumbai, in ORDER NO.1031/2018-CUS(SZ) / ASRA / MUMBAI, dated 30.11.2018, in Revision Application F.No.373/03/B/17-RA, and quash the same and to pass an order of direction, directing to RE-EXPORT the 3 Nos., OF GOLD CHAINS, WEIGHING 599.12 GRAMS, VALUED AT Rs.14,90,730/- without imposition of any Redemption Fine and Penalty and to Refund the Redemption Fine of Rs.6,00,000/- and Penalty of Rs.1,00,000/- paid by the petitioner.

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

O R D E R

This writ petition has been filed for a writ of Certiorarified Mandamus to call for the records of the first respondent herein the

Principal Commissioner & Ex-Officio Additional Secretary to the Government of India, Ministry of Finance (Department of Revenue), Mumbai, in ORDER NO.1031/2018-CUS(SZ) / ASRA / MUMBAI, dated 30.11.2018, in Revision Application F.No.373/03/B/17-RA, and quash the same and to pass an order of direction, directing to RE-EXPORT the 3 Nos., OF GOLD CHAINS, WEIGHING 599.12 GRAMS, VALUED AT Rs.14,90,730/- without imposition of any Redemption Fine and Penalty and to Refund the Redemption Fine of Rs.6,00,000/- and Penalty of Rs.1,00,000/- paid by the petitioner.

2. The petitioner has challenged the impugned order, dated 30.11.2018 passed by the first respondent/The Principal Commissioner & Ex-Officio Additional Secretary to the Government of India under Section 129 DD of the Customs Act, 1962.

3. By the impugned order dated 30.11.2018, the first respondent as the Revisional Authority has dismissed the Revision Application filed by the petitioner against Order in Appeal No.178 of 2016 dated 02.11.2016 issued on 23.11.2016.

4.Earlier, the petitioner had suffered an adverse order in the hands of the Additional Commissioner of Customs, Cochin vide Order in Original No.105 of 2015 dated 28.12.2015 bearing reference F.No.S.14/118/2014 Air Cus.

5. The Additional Commissioner of Customs, Cochin vide Order in Original No.105 of 2015 dated 28.12.2015 bearing reference F.No.S.14/118/2014 Air Cus, held that the three crude gold chains, of weight 599.12 grams, with purity of 24 carat (995) of gold in the form of bars, valued at Rs.14,90,730.38 (Assessable Value) and Rs.16,53,571/- (Market Value) were liable for confiscation absolutely under Sections 111(d), 111(i), 111(j), 111(i) and 111(m) of the Customs Act, 1962.

6. The Additional Commissioner of Customs, Cochin also held that the black jean with lable 'Hitman' dark brown pant with lable 'Cool Colors' and grey pant with lable 'SCNC' which were used for concealing 599.12 grams of gold was liable for confiscation absolutely under Section 119 of the Customs Act, 1962. The Additional Commissioner of Customs, Cochin also imposed penalty of Rs.1,00,000/- under Section 112(a) of the Customs Act, 1962 on the petitioner.

7. On appeal, the Commissioner of Customs (Appeals), Cochin vide Order in Appeal No.178 of 2016 dated 02.11.2016 had partly modified the said order by setting aside the order confiscating gold subject to payment of redemption fine of Rs.6,00,000/- for re-export. However, the penalty imposed under Section 112(a) of the Customs Act, 1962 affirmed.

8. It is the specific case of the petitioner that though the

Revision Authority has concluded that the petitioner has not indulged in any smuggling or concealment of imported gold which is neither restricted nor prohibited, yet order of the lower authority imposing penalty under Section 112(a) of the Customs Act, for a sum of Rs.1,00,000/- has been upheld.

9. The learned counsel for the petitioner submits that the petitioner is a Indian national and while returning from Singapore via Kuala Lumpur had purchased a gold chain weighing about 599.12 grams. It is the case of the petitioner that the above jewelry was kept in his pant pocket and not in the suitcase which was checked in as a cabin luggage.

10. The learned counsel for the petitioner further submits that the petitioner was forced to give a statement as if the petitioner had concealed the gold and thereafter seizure was effected and issued a show cause notice in respect of alleged event of concealment on 20.10.2004.

11. It is the specific case of the petitioner that the petitioner was forced to give a statement by the officers of the Customs and therefore statements obtained from the petitioner on 20.10.2014 under coercion cannot be relied to come to an adverse conclusion that there was concealment and failure on the part of the petitioner to make required declaration.

12. The learned counsel for the petitioner further submits that the purchase of the three gold chains weighing about 599.12 grams which was valued at Rs.14,90,730.38/- (Assessable Value) and Rs.16,53,571/- (Market Value) was under an invoice of the seller from Kuala Lumpur, Malayasia dated 20.10.2014 and that the petitioner had not violated any of the law at the time of import.

13. The learned counsel for the petitioner submits that the law under subject is clear as per the decisions of the Division Bench of this Court in **Sankara Pandi Vs Union of India 2002 (141) ELT 635 (Mad)**, which was later upheld by the Hon’ble Apex Court in the case of **Union of India Vs Sankara Pandi 2018(360) ELT A214 (S.C)**.

14. The learned counsel for the petitioner has also placed reliance on the decision of the Hon’ble Supreme Court in **Siemens Limited Vs Commissioner of Customs 1999 (133) ELT 776 (S.C)**, which was followed by the Division Bench in **Sankara Pandi Vs Union of India** referred to supra. The learned counsel for the petitioner has relied few other decisions of the tribunal which has referred to the decision of this Court in **Sankara Pandi Vs Union of India**, referred to supra.

15. Opposing the prayer, the learned counsel for the

respondents submits that the writ petition is infructuous inasmuch as the petitioner has accepted the order of the first respondent and has paid the redemption fine and penalty for re-export of the imported goods.

16. It is therefore submitted that the writ petition is liable to be dismissed on this ground. That apart, it is submitted that the import was made through Cochin Airport and the Jurisdictional Officer under the Customs Act, 1962 at Cochin issued a show cause notice, dated 16.04.2015, which has culminated in the order, dated 28.12.2015, vide order No.105 of 2015 and subsequent order of the Appellate Commissioner at Cochin vide order in Appeal No.178 of 2016, dated 02.11.2016, issued on 23.11.2016.

17. It is therefore submitted that the revision petition filed by the petitioner before the first respondent at Mumbai which has culminated in the impugned order and can at best be assailed either before the High Court of Bombay or Kerala High Court and not before the Madurai Bench of Madras High Court as no part of cause of action has arisen within the jurisdiction of this Court.

18. The learned counsel for the respondents further submit that the petitioner having submitted to the order of the first respondent by paying the redemption fine and penalty can no longer agitate the issue before this Court or any other High Court.

19. By way of rejoinder, the learned counsel for the respondents submits that the first respondent as the jurisdictional revisional authority is amenable to the jurisdiction of this Court for all cases arising out of imports or exports made from all the southern states including the State of Maharashtra.

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

21. In **Kusum Ingots and Alloys Ltd. v. Union of India** 2004 (168) E.L.T. 3 (S.C.), the Hon'ble Supreme Court held that "*When an order, however, is passed by a Court or Tribunal or an executive authority whether under provisions of a statute or otherwise, a part of cause of action arises at that place. Even in a given case, when the original authority is constituted at one place and the appellate authority is constituted at another, a writ petition would be maintainable at both the places. In other words as order of the appellate authority constitutes a part of cause of action, a writ petition would be maintainable in the High Court within whose jurisdiction it is situate having regard to the fact that the order of the appellate authority is also required to be set aside and as the order of the original authority merges with that of the appellate authority* "

22. No part of cause of action has arisen within the jurisdiction of this Court. Therefore, on this count alone this Court is liable to be dismissed. That apart, the petitioner has also re-exported the crude gold which was ordered to be confiscated and subsequently released pursuant to the impugned order. Therefore, on this count also there is no merits in the present writ petition.

23. That apart, the petitioner has violated the provisions of the Customs and Baggage Rules, 2016. The petitioner was duty bound to declare under provision of Baggage Rules, 2016 read with Customs Baggage Declaration Regulations, 2013. Sub-clause (b) to proviso Rule 3 read with annexure 1 of the Baggage Rules. 2016, gold or silver ornaments in any other form cannot be allowed to be cleared duty free as *bonafide* baggage if they exceeded Rs.15,000/-. Gold or silver in any other form are not bonafide baggage.

24. It was incumbent on the part of the petitioner to have filed appropriate declarations under the Rule. The petitioner attempted to evade duty. As the petitioner failed to do so, the Order in Appeal of the Commissioner of Customs (Appeals), which has been upheld by the first respondent Principal Commissioner & Ex-Officio Additional Secretary to the Government of India as the Revisional Authority under Section 129DD of the Customs Act, 1962 merits no interference.

25. Therefore, I do not find any infirmity in the order of the first respondent Principal Commissioner & Ex-Officio Additional Secretary to the Government of India, passed in his capacity as the Revisional Authority under Section 129DD of the Customs Act, 1962. This Writ Petition stands dismissed in view of the above observations. No costs.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/07/2022

Sub Assistant Registrar(CS)

rgm/sn

To

1. The Principal Commissioner & Ex-Officio
   Additional Secretary to the Government of India,
   Ministry of Finance (Department of Revenue),
   8th Floor, World Trade Centre,
   Centre-I, Cuffe Parade,
   Mumbai – 400 005.

2. The Additional Commissioner of Customs (Airport),
   Cochin International Airport Limited,
   Nedumbassery, Custom House,
   Cochin.

+1 CC to M/s.R. ARAVINDAN, Advocate (SR-25898[F] dated 15/06/2022)

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