IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **08.02.2023**

CORAM

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

W.P.No.2742 of 2023
and
W.M.P.No.2855 of 2023

Barakathnisa ... Petitioner

Vs.

1.The Principal Commissioner of Customs,
Chennai - 1 Commissionerate,
Air Intelligence Unit,
Anna International Terminal, Chennai Airport,
Chennai - 600 027.

2.The Assistant / Deputy Commissioner of Customs,
Air Intelligence Unit,
Anna International Terminal, Chennai Airport,
Chennai - 600 027.

3.The Superintendent of Customs,
Air Intelligence Unit, (Batch -B),
Anna International Terminal, Chennai Airport,
Chennai - 600 027. ... Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records relating to the Detention receipt made by the third respondent herein in DR No.DR/INMAA4/16-01-2023/002045, dated 16.01.2023, ACS (Batch - B) and quash the same as illegal and consequently direct the third respondent herein to release and return the two gold chains weighing 44.00 grams (one chain weighing 29 grams and another chain weighing 15 grams) covered by DR. No.DR/INMAA4/16-01-2023/002045.

For Petitioner : Mr.A.K.Jayaraj

For Respondents : Mr.Rajnish Pathiyil
Standing Counsel

ORDER

The petitioner has challenged the impugned detention receipt dated 16.01.2023 issued by the third respondent under the Customs Act, 1962.

2. The petitioner was travelling as a passenger and had arrived in Chennai from Bangkok (Thailand). According to the petitioner, she had worn the subject jewellery weighing 44 grams over her body which has been detained under the impugned detention receipt dated 16.01.2023 on the ground that on an earlier occasion, the petitioner was liable to pay a penalty of Rs.10,000/- in respect of a travel in the year 2018. Admittedly, the jewellery detained from the petitioner under the impugned detention receipt

dated 16.01.2023 is only 44 grams which is approximately 5 sovereigns. The jewellery weighing 44 grams was seized from the petitioner as well as from her daughter, who were travelling together.

3. Under the Baggage Rules, only in cases where the value of the goods carried by the passenger is more than Rs.50,000/-, the said passenger will have to pay the appropriate Customs duty. In the instant case, the jewellery was seized from two passengers viz., from the petitioner as well as from her daughter and the total weight of the said jewellery is only 44 grams put together. Therefore, it can be presumed that if the said weight is divided into two, each of the passengers would have carried at the most 22 grams each which is a meagre quantity which a normal woman passenger would have worn over her body. Therefore, the question of detaining the said jewellery weighing 44 grams, which was worn by two passengers, will not arise.

4. It is also seen from the impugned detention receipt dated 16.01.2023 that the reason for detention is not in respect of the jewellery carried by the petitioner as well as by her daughter, but, only due to the fact

that during her earlier travel in the year 2018, the petitioner is liable to pay the penalty of Rs.10,000/-, which the petitioner contends that it is the subject matter of a Statutory Appeal which is still under consideration.

5. Any normal women passenger ordinarily will wear jewels over her body. The 44 grams of jewellery seized from the petitioner and her daughter by the respondents cannot be treated as excessive. Therefore, erroneously on the ground that the petitioner is liable to pay the penalty in respect of her earlier travel in the year 2018, the impugned detention receipt dated 16.01.2023 has been issued. The penalty amount of Rs.10,000/- in respect of the earlier travel by the petitioner in the year 2018 which is reflected under the impugned detention receipt dated 16.01.2023 is also the subject matter of a Statutory Appeal.

6. For the foregoing reasons, this Court is of the considered view that by total non application of mind to the fact that the petitioner and her daughter had worn over their bodies only jewellery weighing a meagre 44 grams which cannot be treated to be excessive, as any woman passenger would normally wear jewellery weighing that extent, the impugned

detention receipt dated 16.01.2023 has been issued. In view of the aforementioned reasons, the impugned detention receipt dated 16.01.2023 has to be necessarily quashed and the Writ Petition will have to be allowed.

7. Accordingly, the impugned detention receipt dated 16.01.2023 issued by the third respondent is hereby quashed and the Writ Petition is allowed with the following directions:

a) Since the petitioner has admittedly not paid the penalty amount in respect of her earlier travel which is reflected in the impugned detention receipt dated 16.01.2023, the petitioner shall deposit the said amount with the third respondent within a period of one week from the date of receipt of a copy of this order;

b) On receipt of the said deposit, the third respondent shall release and return the seized jewellery as per the impugned detention receipt dated 16.01.2023 to the petitioner within a period of one weeks thereafter.

8. This order is being passed by this Court in the facts and circumstances of the present case on hand and this order cannot be treated

as a precedent. No Costs. Consequently, the connected Writ Miscellaneous Petition is closed.

08.02.2023

Index : Yes/No
Speaking Order : Yes / No
Neutral Citation Case: Yes / No
ab

To

1.The Principal Commissioner of Customs,
Chennai - 1 Commissionerate,
Air Intelligence Unit,
Anna International Terminal, Chennai Airport,
Chennai - 600 027.

2.The Assistant / Deputy Commissioner of Customs,
Air Intelligence Unit,
Anna International Terminal, Chennai Airport,
Chennai - 600 027.

3.The Superintendent of Customs,
Air Intelligence Unit, (Batch -B),
Anna International Terminal, Chennai Airport,
Chennai - 600 027.

ABDUL QUDDHOSE. J.,

ab

W.P.No.2742 of 2023

08.02.2023
(1/2)