



W.P.No.18792 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.04.2023

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.No.18792 of 2020
and
W.M.P.No.23355 of 2020

Rajaram Jora

.. Petitioner

vs

1.Commissioner of Customs
(AIRPORT AND CARGO)
New Customs House, GST Road,
Chennai – 600 027.

2.Assistant Commissioner of Customs
(Rummaging and Intelligence)
Office of the Commissioner of Customs (Chennai III)
Chennai – 600 001.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue writ of certiorarified mandamus calling for the records in F.No.O.S.105/92-ADUN (SEA) dated 09.11.2020 on the file of the 2nd respondent and quash the same as illegal and contrary to law and direct the respondents to release the gold to the petitioners as per the orders passed by the Customs, Excise, Service Tax Appellate Tribunal dated 18.03.2019.

For Petitioner : Dr.A.Thiagarajan, Senior Counsel
for Mr.S.Ramesh Kumar

For Respondents : Mrs.Hema Muralikrishnan
Senior Standing Counsel



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ORDER

The petitioner challenges order dated 09.11.2020 passed by the Assistant Commissioner of Customs (Rummaging and Intelligence) / R2.

2. This matter has a chequered and interesting history. On 22.04.1992, Room No.58 in Dasaprakash Hotel was searched by the officers of the Customs Department. It was found under occupation of the petitioner and some other persons. The officers seized two long packets covered with clinical plaster that had been concealed in a reaper fixed on to the front legs of a cushioned sofa.

3. Upon opening the packets, six gold biscuits with foreign markings were recovered. Additionally, three packets covered with insulation tape had been found from the bathroom and upon opening the same, two gold biscuits with foreign markings in one packet and four gold biscuits with foreign markings in the other two packets were recovered.

4. Upon questioning at the spot, the petitioner had admitted that he had brought the aforesaid five packets of gold packets by concealing them. Two packets had been kept inside his shoes and socks and the other three in his person, in the rectum. He arrived from Calcutta and upon arrival concealed them in the places where



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they had been located by the authorities. All 22 gold biscuits (assets in question') with the packing material had been seized under the applicable provisions of the Foreign Exchange Regulations Act, 1973. The petitioner was arrested and remanded to judicial custody.

5. The minute details of the subsequent investigation may not be relevant for the present case, and it would suffice to state that an order of adjudication had come to be passed on 11.01.1994 by the Collector Customs. After a detailed exposition of the facts and circumstances, the authority concludes that the 22 gold biscuits weighing 2565 gms and valued at a sum of Rs.7,35,247.81/ had been smuggled into the Country and were liable for absolute confiscation in terms of Section 111 (d) of the Customs Act, 1962 (in short, 'Act') read with Section 3 (3) of the Foreign Trade (Development and Regulation) Act, 1992.

6. Personal penalty was also imposed on the petitioner as well as two others under Section 112 of the Act. Since the order absolutely confiscated the assets in question, the necessity for imposition of duty did not arise at that juncture. The petitioner challenged the matter in appeal and the Commissioner (Appeals), modified the order-in-original. He was of the view that the petitioner must be permitted to redeem the goods upon payment of fine.



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7. For determining the redemption fine, he valued the 22 gold biscuits at a sum of Rs.37,76,962.50/- being the market value at the time of passing of appellate order dated 29.04.2009 and permitted redemption of fine of Rs.15,00,000/- under Section 125 of the Act. The petitioner challenged the order further in appeal before the Customs Excise and Service Tax Appellate Tribunal ('Tribunal').

8. Pending appeal, the petitioner made a request for redemption of the confiscated gold and the Assistant Commissioner vide communication dated 24/31.07.2015 computed the duty liability that would arise in the event of redemption as follows:-

"Please refer to your letter dated 29.05.2015 on the above subject.

Towards redemption of the confiscated gold in the above-cited case, the following liability has to be discharged by your client.

*Duty @ 36.50% (Customs duty
35% + 3% Cess on Customs duty) on
Rs.65,74,095/- being the value @ 2563 gms
(of 24 gm purity) x Rs.2,565/- per gram
(considering the date of payment to be
23.07.15) = Rs.23,69,961/-*

*Redemption Fine = Rs.15,00,000/-
Personal Penalty = Rs. 14,000/-
(Rs.10,000 on Shri. Rajaram Jora
Rs.2,000/- each on Shri.Rajendra Kumar
Verma and shri. Gopichand soni)
Warehousecharges(approximately)=Rs.25,000"*

9. The above computation and determination of duty



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assumes importance in light of the challenge now made to the determination of duty. As early as 24.07.2015, the officer has determined the duty to be paid based on the basis of the applicable statutory provision, which is Section 15 of the Act. Section 15, to be noted, prescribes the '*date for determination of rate of duty and tariff valuation of imported goods*'. The provision is specific to the date that shall be adopted for valuation of the goods for the purposes of determination of rate of duty and reads as under:-

"15. Date for determination of rate of duty and tariff valuation of imported goods:

(1) The rate of duty and tariff valuation, if any, applicable to any imported goods, shall be the rate and valuation in force-

(a) in the case of goods entered for home consumption under section 46, on the date on which a bill of entry in respect of such goods is presented under that section;

(b) in the case of goods cleared from a warehouse under section 68, on the date on which [a bill of entry for home consumption in respect of such goods is presented under that section]

(c) in the case of any other goods, on the date of payment of duty;"

10. Since the goods in question have neither been imported for home-consumption under Section 46 nor cleared from warehouse under Section 68 but constitute smuggled goods, the officer has proceeded to adopt the manner of determination set out in clause (c) which is the valuation as on date of payment of duty.



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11. Thus, he has determined the value as on 23.07.2015 and has proceeded correctly in this regard. The petitioner has not challenged order dated 24.07.2015, and rightly so, seeing as the manner of valuation and consequent determination of duty is seen to be in order and in accordance with the statutory prescription in this regard.

12. To continue with the narration qua litigation, the appeal filed by the petitioner before the Tribunal came to be disposed on 29.04.2009, the CESTAT dismissing the appeal and upholding the order of adjudication. As against the same, the petitioner filed a Civil Miscellaneous Appeal before the Division Bench of this Court in C.M.A.No.2683 of 2016 that came to be allowed on 19.09.2018.

13. The order of the Tribunal came to be set aside and the matter remanded to the CESTAT with a direction to test as to whether the authority was right in fixing the market value of the gold as on the date when the order was passed, for purposes of deciding the redemption fine. The Court recorded the petitioner's argument that it was the market value prevailing as on date of seizure that should have been taken into consideration in fixing the redemption fine.

14. This is the correct position of law as obtains from Section 125 of the Act, specifically the second proviso to Section 125(1),



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which states that '*without prejudice to the provisions of the proviso to sub-section 2 of Section 115, such fine shall not exceed the market price of the goods confiscated, less in the goods of market goods the duty chargeable thereof*'.

15. To be noted, that the entirety of the litigation preferred by the petitioner emanating from Order-in-Original dated 11.01.1994 upto the order in CMA dated 19.09.2018 touch only upon the aspect of redemption fine. There is no dispute in this regard and the petitioner has not produced any material, including grounds of appeal, though specifically called for, to establish that valuation for the purposes of duty determination was ever in question. Thus, and to clarify, the determination of duty under order dated 23.07.2015 was admittedly, never in question.

16. Seen in this light, the narration relating to the litigation is really of no consequence in the matter as the valuation of the asset in question for determination of duty, emanates from order dated 24/31.07.2015 which has attained finality as on date. The narration in regard to the litigation is for purposes of completion and seeing as the petitioner has emphasised only upon those orders that are of no consequence really, in deciding the issue relating to valuation of the goods for determination of customs duty.

17. The enactment contemplates two separate and distinct



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schemes for valuation in the context of imposition of duty on the one hand, and fixing redemption fine, on the other. As far as duty is concerned, the applicable provisions are Sections 14 and 15. Section 14 talks of valuation of the goods which is the manner by which such valuation should be effected and Section 15 crystalizes the date as on which such valuation must take place. Coming to redemption fine, Section 25 is a code by itself and states that the valuation for purposes of fixing redemption fine, shall not exceed the market price as on the date of confiscation of the goods. Thus, the Act contemplates two separate and different scenarios, one while imposing customs duty and the other, in the levy of redemption fine.

18. The argument of the petitioner to the effect that the date of valuation must be taken to be the date of confiscation of the goods for the purposes of levy of customs duty thus has no merit. Impugned order dated 09.11.2020 calls upon the petitioner to pay duty as per Section 15(1)(c) of the Customs Act, 1962 and there is no legal infirmity made out in this regard. In fact, the valuation and determination of duty is a fait accompli as early as on 23.07.2015. The challenge to impugned order dated 09.11.2020 is rejected and the same is upheld. As regards the prayer for release of the goods, it is made clear that the asset in question, being the gold biscuits



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presently in confiscation, shall be released within a period of two weeks of payment of duty.

19. The writ petition is dismissed. No costs. Connected miscellaneous petition is closed.

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Index:Yes
Neutral Citation:Yes
ssm

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