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W.P.No.29618 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.29618 of 2022

M.Thameem Ansari

... Petitioner

vs.

1.The Principal Commissioner of Customs,
Chennai -1, Commissionerate (Airport),
New Customs House, Meenambakkam,
Chennai - 600 016.

2.The Assistant Commissioner of Customs, (Airport),
Office of the Commissioner of Customs, (Disposal-AIR),
New Custom House, Meenambakkam,
Chennai - 600 016.

3.The Joint Commissioner of Customs
(Adjudication-AIR),
Customs-Airport -Commissionerate,
Meenambakkam,
Chennai – 27.

... Respondents

(Suo moto impleaded by this Court in
W.P.No.29618 of 2022 dated 23.08.2023)

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, seeking to issue a Writ of Mandamus, to direct the second respondent herein to release and return the seized gold bars totally weighing 795 grams covered by O.S.No.491/2022 AIU A Batch.



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For Petitioner : Mr.A.Sajidha Meera Rumana

For Respondents : Mr.B.Arvind Srivatsa
Junior Standing Counsel

ORDER

Heard the learned counsel for the petitioner and the learned Junior Standing Counsel for the respondents.

2. This writ petition has been filed by the petitioner for a writ of mandamus to direct the second respondent to release and return the seized gold bars totally weighing 795 grams covered by O.S.No.491/2022 AIU A Batch.

3. The petitioner was carrying gold in his persons while returning from Colombo on 13.05.2022. The gold bar from his person was seized on the same day. The petitioner had paid a sum of Rs.65,000/- towards bail and was released. The petitioner has now suffered an adverse order vide Order-in-Original No.343/2022-2023 Commissionerate-I dated 27.03.2023 in the hands of Joint Commissioner of Customs (Adjudication - AIR). This order has been



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passed after the writ petition was filed on 31.10.2022 and after the respondents have filed the counter on 18.11.2022. Therefore, the Joint Commissioner of Customs (Adjudication-AIR) is suo moto impleaded as respondent No.3.

4. By the aforesaid order, the respondents have now ordered confiscation and has imposed penalty of Rs.4,00,000/- as detailed below:

ORDER:

(i)I order for ABSOLUTE CONFISCATION of the seized 01 No. of gold ingot weighing 795 grams valuing Rs.36,18,045/- (Rupees Thirty Six Lakhs Eighteen Thousand and Forty Five only) under Section 111(d), (i), (j), (l) and (m) of the Customs Act, 1962 read with Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992, based on findings in paras 9 to 13 cited supra.

(ii)I order for ABSOLUTE CONFISCATION of the seized material object of no commercial value viz., grey coloured plastic pouch and hand baggage with marking "CTERPILLAAR' under Section 119 of the Customs Act, 1962 read with Foreign Trade (Development and Regulation) Act, 1992, based on findings in paras 9 to 13 cited supra.

(iii) I impose a penalty of Rs.4,00,000/- (Rupees Four Lakhs only) on Shri.Thammem Ansari S/o. Shri Mohamed Hussain Abdul Gafoor under Section 112(a) and (b) of the Customs Act, 1962 based upon findings



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in para 14 cited supra.

5. The Madurai Bench of this Court in the case of ***Barakathnisa Vs. The Principal Commissioner of Customs, Chennai and others*** in W.P.(MD).No.5148 of 2018 dated 20.04.2018 has taken a view that the gold ornaments which were attempted to be smuggled by mis-declaring to be cleared on payment of customs duty and such security in the form of bank guarantee. This view of the Madurai Bench of this Court was also followed supra in the case of ***A.Krishnamoorthy Vs. The Commissioner of Customs and others*** in W.P.(MD).No.3456 of 2022 etc batch dated 30.03.2022.

6. Therefore, this writ petition is allowed by directing the petitioner to deposit the customs duty on the gold that was seized on 13.05.2022 from the person of the petitioner together with penalty imposed vide Order-in-Original No.343/2022-2023, Commissionerate-I dated 27.03.2023 for a sum of Rs.4,00,000/- after obtaining necessary security from the petitioner towards the redemption fine that may be imposed on the petitioner.



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7. Order-in-Original No.343/2022-2023 - Commissionerate-I, dated 27.03.2023, is partly set aside and the case is remitted back to the third respondent to decide on the amount of redemption to be imposed on the petitioner. It is made clear the seized gold shall be released subject to the petitioner paying the customs duty, penalty that has been imposed vide Order-in-Original No.343/2022-2023 - Commissionerate-I, and on furnishing such security to the satisfaction of the Customs Department. The third respondent shall pass denovo order within a period of three months from the date of receipt of a copy of this order.

8. This writ petition is allowed with the above observation.

No costs.

23.08.2023

Index:Yes/No
Internet:Yes/No
Speaking/Non-speaking Order
Neutral Citation : Yes/No
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To

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C.SARAVANAN, J.

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