IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2023

CORAM :

The Hon'ble Mr.JUSTICE M.SUNDAR

W.P.No.34 of 2023
and
W.M.P.No.23 of 2023
in
W.P.No.34 of 2023

Shri. R. Krishnamoorthy
No.69, Karumarampalayam
Uthukuli Main Road
Tirupur - 641 607. .. Petitioner

Vs.

1. The Deputy Director
Directorate of Revenue Intelligence
Coimbatore Zonal Unit
1103, Trichy Road
Coimbatore - 641 018.

2. Commissioner of Customs (Import)
Group VB, NS-V
Jawaharlal Nehru Custom House, Tal-Uran
NhavaSheva, Raigad,
Navi Mumbai - 400 707. .. Respondents

Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order bearing No.09/PR/DS/2021 in F.No.S/26-Misc-1191/2021-22/Grp.5B JNCH dated 29.12.2021 of the 2nd respondent and quash the same and direct the 2nd respondent to release the vehicle bearing registration No.PB 36J 9799 without insisting for any security or deposit along with its original Registration Certificate.

For Petitioner : Mr.Hari Radhakrishnan
For Respondents : Mr.V.Sundareswaran
Senior Panel Counsel for Customs

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O R D E R

This order will now govern the captioned main writ petition and captioned 'Writ Miscellaneous Petition' ['WMP'] thereat.

2. Mr.Hari Radhakrishnan, learned counsel on record for writ petitioner and Mr.V.Sundareswaran, learned Senior Panel Counsel for Customs who accepted notice on behalf of both the respondents are before this Court.

3. Owing to the narrow compass on which the captioned matter turns, considering the facts and circumstances of the instant case and the

trajectory the matter has taken in the Admission Board, main writ petition was taken up and heard out with the consent of learned counsel on both sides.

4. Short facts will suffice. Short facts shorn of granular particulars are that the fulcrum of the case is an Automobile i.e., 'Toyota Land Cruiser' [hereinafter 'said automobile' for the sake of convenience and clarity]; that according to Revenue, it was imported in the name of a privileged person / Foreign Diplomat availing duty benefits but it was found in possession of writ petitioner who is a non-privileged person; that the writ petitioner contends that he has nothing to do with the import or availment of benefits vide exemption notification No.3/57 dated 08.01.1957 as he is a *bona fide* purchaser having purchased the said automobile through one Mr.Nipun Miglani; that the said automobile was seized by 'Directorate of Revenue Intelligence' ['DRI']; that the writ petitioner filed an earlier writ petition namely, W.P.No.16139 of 2021 assailing the seizure of said automobile; that pending this earlier writ petition, on the recommendation of investigating agency i.e., DRI, the second respondent made an 'order dated

29.12.2021 bearing reference No.09/PR/DS/2021 in F.No.S/26-Misc-1191/2021-22/Grp.5B JNCH' [hereinafter 'impugned order' for the sake of convenience and clarity]; that the impugned order was made by the second respondent *inter alia* under Section 110A of 'the Customs Act, 1962' [hereinafter 'said Act' for the sake of brevity and convenience]; that vide the impugned order, second respondent had imposed certain conditions for provisional release of said automobile; that the writ petitioner has filed the captioned writ petition saying that he is aggrieved by some of the condition/s for release; that it is to be noted that in the impugned order, paragraph No.2 describes said automobile as 'Toyota Land Cruiser' whereas in paragraph No.7, it describes said automobile as 'Range Rover', while former is a Japanese make car and the latter is manufactured in England; that adverting to seizure memo, learned counsel for writ petitioner submits that it is 'Toyota Land Cruiser' and paragraph No.7 appears to be an inadvertent error; that it is to be noted that the writ petitioner is not assailing all the conditions but it may not be necessary to go into those aspects in the light of the order this writ Court now proposes to make.

5. Learned counsel for writ petitioner reiterates that the provisional release is acceptable and only some of the conditions need to be modified. Learned Revenue counsel opposes this request for modification.

6. This Court makes it clear that it is not delving into this disputation or contestation and is not expressing any view or opinion on the merits of the matter in this order. The reason is, the writ petitioner has sent a detailed representation dated 11.10.2022 (addressed to second respondent) requesting for modifications qua conditions for release adumbrated in the impugned order and it will suffice if the second respondent is directed to consider this 11.10.2022 request on its own merits and in accordance with law, take a call and make orders as expeditiously as the official business of the second respondent would permit and in any event, within one week from today i.e., by 11.01.2023. The decision of the second respondent shall be communicated to the writ petitioner under due acknowledgment in a acceptable mode within two working days from the date of disposal.

7. Before dropping the curtains on the captioned matter, this Court deems it appropriate to scan and reproduce the aforementioned 11.10.2022

request for modification for the sake of convenience [Page Nos.115 to 117]. A scanned reproduction of the same is as follows:

K.KRISHNAMURTHY

October 11, 2022

To
The Commissioner of Customs,
Nhava Sheva – V,
Jawaharlal Nehru Custom House,
Nhava Sheva,
Maharashtra – 400 707

Sir,

Sub: Request for modification of the provisional release letters – Reg.

Ref: (1) Proceedings in F.No.DRI/MZU/NS-[illegible]/2021/151
(2) Seizure memo dated 06.09.2021
(3) Letter dated 22.10.2021
(4) Provisional release order dated 20.12.2021
(5) Writ Petition No. 18139 of 2021

Investigation was initiated in the above-referred DRI file number and the investigating Officer had seized car of make "Toyota Land Cruiser" having chassis number "[illegible]", vide seizure memo dated 06.09.2021. Subsequent to the seizure, I have sought for provisional release of the seized vehicle, vide letter dated 22.10.2021 and the same was disposed of, vide order dated 20.12.2021 imposing the following conditions:

i) The beneficial owner shall pay the differential duty amounting to 67,74,840/- (Rupees Sixty seven Lakhs Seventy four Thousand Eight Hundred and Forty Only).

ii) Execute a Bond for 33,21,000/- (Rupees Thirty three Lakhs Twenty one Thousand only) with an undertaking that they shall pay the duty, fine and/or penalty as may be adjudged by the Adjudicating Authority subject to appellate provisions under the Customs Act, 1962 as prescribed in para [illegible] of Circular No.[illegible]/2017-Customs dated [illegible].8.2017

No: 69, Karumarampalayam, Uthukuli Main Road, Tirupur - 641 607.
Mob No : 94437 35656
GST No : 33AGEFR2757B1ZN
Email ID : [illegible]@hotmail.com

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R.KRISHNAMURTHY

(iii) Execute a Bank Guarantee of 1,50,00,000/- (Rupees One Crore Fifty Lakhs only) having clause binding the issuing bank to keep it renewed and valid till final adjudication of the case, or in the event of non renewal of Bank Guarantee as above, the guaranteed amount be credited to the Government account by the bank on its own as prescribed in para 5 of Circular No.35/2017 Customs dated 16.08.2017."

Copy of the provisional release order dated 29.12.2021 is enclosed as **Annexure –A.**

2. It is brought to your kind attention that I have challenged the above-mentioned Seizure Memo dated 06.08.2021, by filing a writ petition before the Hon'ble High Court of Madras bearing W.P. No. 16139 of 2021. The said writ petition was closed, vide order dated 12.09.2022, with a liberty to seek for modification of the above-mentioned conditions imposed, vide provisional release order dated 29.12.2021. Copy of the order dated 12.09.2022 of the Hon'ble High Court of Madras is enclosed as **Annexure – B.**

3. It is submitted that the Division Bench of the Hon'ble High Court of Madras in the case of *Commissioner of Customs, Chennai II Vs. Nobel Impex* reported in 2019 (365) ELT 312 (Mad.) held that the guidelines laid down in Circular No. 35/2017-Cus dated 16.08.2017 relating to provisional release should not be applied mechanically and the quantum of bank guarantee should be decided on the merits of each case. The Hon'ble Court further granted provisional release on execution of bank guarantee for 50% of the differential duty and on execution of bond for the balance 50% of the differential duty.

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R.KRISHNAMURTHY

In a similar case, the Hon'ble High Court of Bombay in *Ashish Parasrampuria Vs. Commissioner of Customs (Import)*, reported in 2010 (253) ELT 186 (Bom) held that the conditions imposed by the Adjudicating Authority is harsh and therefore, passed an order modifying the conditions in the interests of the justice. In the case in hand, I was neither aware of the import of the car made after claiming the benefit of notification no. 3/57 dated 08.01.1957 nor had shetted with the importers.

4. It is submitted that similar bonafide purchasers had approached the Hon'ble High Court of Telangana and Bangalore challenging the conditions imposed in the provisional release orders and the Hon'ble High Courts have held that the conditions imposed in the provisional release orders are arbitrary and unreasonable. Consequently, the conditions were reduced to the extent of payment of 50% of the duty and execution of balance 50% of the duty imposed and execution of personal bond for provisional release of the car. Copy of the orders of the Hon'ble High Court of Telangana and Bangalore is enclosed as **Annexure – C.**

5. For the reasons mentioned above, it is humbly requested that the conditions imposed in the order dated 29.12.2021 may be reduced in line with the orders of the Hon'ble High Courts of Telangana and Bangalore. I may be given an opportunity of personal hearing before passing any further orders in this regard. Your early response on our request is requested.

Yours faithfully,

R.Krishnamurthy

No: 69, Karumarampalayam, Uthukuli Main Road, Tirupur - 641 607.
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8. Captioned Writ Petition disposed of with the aforementioned directives. Consequently, Writ Miscellaneous Petition thereat is disposed of as closed. There shall be no order as to costs.

04.01.2023
(2/2)

Index: Yes/No
Speaking / Non-speaking order
Neutral Citation : Yes / No

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To

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