



WP (MD) No.27248 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

WP (MD) No.27248 of 2023

and

WMP (MD) No.23396 of 2023

Selvam

... Petitioner

Vs

1.The Commissioner of Customs (prev),
Williams Road,
Cantonment,
Tiruchirappalli - 620 001.

2.The Deputy Commissioner of Customs,
International Airport,
Sembattu,
Tiruchirappalli - 620 007.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus calling for the records pertaining to the impugned order in original No.111/2023, dated 05.09.2023 (issued from file C.No.VIII/10/147/2023-Airport) passed by the 2nd respondent and quash the same as illegal, arbitrary and violative of the principle of natural justice and consequently directing the second respondent to release the confiscated gold, ie., 1 No of Gold and 7 Nos of gold



WP (MD) No.27248 of 2023

rings weighing approximately 184.90 grams to the petitioner within the time limit as fixed by this Court on payment of appropriate duty payable by the petitioner without any penalty within the time limit as fixed by this Court.

For petitioner : Ms.K.Balachandran

For Respondents : Mr.N.Dilip Kumar,
Standing Counsel

ORDER

The petitioner has filed this writ petition as against the order of confiscation of gold ornaments of this petitioner.

2.The petitioner a passenger from Kuala Lumpur to Chennai, was found in possession of a gold chain, gold rings seven in numbers weighing 184.90 grams, which was valued at Rs.9,57,159/-. The petitioner has failed to disclose the possession of these gold ornaments and also concealed the same in cosmetic products. It was found by the authorities on inspection and search. The petitioner has stated that an unknown person at Kuala Lumpur Airport had given the gold ornaments and requested him to clear the



WP (MD) No.27248 of 2023

same without payment of custom duty and without declaration to the custom officers. The unknown person has also offered him a sum of Rs.15,000/- for clearing the goods without any payment of customs duty. Based on this statement recorded from the petitioner, the respondents have proceeded with the adjudication proceedings as per Section 77 of the Customs Act and also confiscated the goods as per Section 111 of the Customs Act. The respondents have also imposed a penalty under Sections 112 (a) and 112 (b) of the Customs Act on 05.09.2023. As against the same the present writ petition is filed.

3.The learned Counsel for the petitioner submits that the impugned order has been passed without even providing an opportunity of hearing to the petitioner and in violation of the principle of natural justice and the petitioner has denied statement said to have been given to the respondents on 30.08.2023. The petitioner has also produced the receipts issued by SMS Gold House, Kuala Lumpur, Malaysia that he has purchased the goods from the shops and he denied the alleged statement recorded by the



WP (MD) No.27248 of 2023

respondents. Further the petitioner has studied only upto 8th standard, but the adjudication proceedings were conducted in English.

4.The learned Standing Counsel appearing for the respondents submits that this petitioner is an agent, who has transported the gold ornaments on behalf of another. He points out that the petitioner went to Kuala Lumpur on 26.08.2023 and returned to India on 30.08.2023. However, the petitioner has produced receipts dated 26.07.2023, 04.08.2023, 23.08.2023, 10.02.2023, 28.01.2023, 24.01.2023 and 07.01.2023. Therefore, the petitioner is not a genuine traveler and further the goods were also concealed in cosmetics. Therefore, the respondents have proceeded as in accordance with law and passed the order confiscating the goods and imposing penalty.

5.This Court considered the rival submissions made and perused the materials placed on record.

6.The main contention of the petitioner is that he was



WP (MD) No.27248 of 2023

not provided with an opportunity of hearing before the adjudication proceedings were conducted, before passing the order of confiscation and imposing penalty.

7.The learned Standing Counsel for the respondents relied on the statement dated 30.08.2023 said to have been given by the petitioner to the 1st respondent Deputy Commissioner that he had not required any notice for adjudication proceedings and therefore, they have proceeded without issuing any notice.

8.The impugned order also commences with a line that show cause notice has been dispensed with. The petitioner now denies the letter dated 30.08.2023 that this letter has been prepared by obtaining signature of this petitioner in a blank paper. He also claims that he has studied only upto 8th standard. While so the respondents ought to have informed the charges as against the petitioner in the regional language enabling him to defend the case.



WP (MD) No.27248 of 2023

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9. Considering the rival submissions and in order to give quietus to this issue, this Court sets aside the impugned order.

(i) The 2nd respondent is directed to issue a show cause notice to the petitioner within a period of two weeks from the date of receipt of a copy of this order.

(ii) The petitioner is at liberty to furnish his reply if any, to the show cause notice to be issued by the respondents, within a period of two weeks therefrom.

(iii) The 2nd respondent on receipt of the reply from the petitioner shall conduct enquiry by affording an opportunity of hearing to the petitioner and pass final orders within a period of fix weeks therefrom.

10. This writ petition is allowed in the above terms. No costs. Consequently connected miscellaneous petition is closed.

14.12.2023



WP (MD) No.27248 of 2023

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WP (MD) No.27248 of 2023

B.PUGALENDHI, J.

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WP (MD) No.27248 of 2023

14.12.2023