IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2024

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Appeal No.178 of 2024
and
C.M.P. No. 1047 of 2024
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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 Customs House, Meenambakkam
   Chennai 600 016

3.The Joint Commissioner of Customs (Adjudication-AIR)
   Customs-Airport-Commissionerate
   Meenambakkam
   Chennai 600 027 .. Appellants

Versus

M. Thameem Ansari .. Respondent

Writ Appeal filed under Clause 15 of the Letters Patent Act, against the order dated 23.08.2023 passed in W.P.No.29618 of 2022.

For Appellants	:	Mr. V. Sundareswaran Senior Panel Counsel
For Respondent	:	Ms. Sajidha Meera Rumana

J U D G M E N T

(Judgment of the court was delivered by R. MAHADEVAN, J.)

This Writ Appeal arises from the order dated 23.08.2023 passed by the learned Judge in W.P. No. 29618 of 2022.

2. The respondent has filed the above writ petition for a Mandamus to direct the second appellant to release and return the seized gold bars totally weighing 795 grams covered by O.S. No. 491/2022 AIU A Batch.

3. In the affidavit filed in support of the writ petition, it was stated by the respondent-writ petitioner that on 13.05.2022, he travelled from Colombo to Chennai via Indigo Flight No. 6E 1208 and reached Anna International Airport, Chennai. On his arrival, the officials of the appellants subjected him to physical check up and noticed that he was in possession of 795 grams of gold bars in paste form, valued at Rs.36,18,045/-. In connection with the possession of gold bars, a case in O.S. No. 491/2022 AIU A Batch was registered. Upon registration of the case, the respondent was directed to pay Rs.65,000/- as bail amount, which was paid by him, on the same day i.e., on 13.05.2022 and was duly acknowledged by the officials of the appellants. Subsequently, an application under Section 110 (1A) of the Customs Act,

1962 (in short, "the Act"), came to be filed before the Commissioner (Appeals), Chennai. Pursuant to the same, a show cause notice dated 16.08.2022 was issued calling upon the respondent to submit his explanation, if any, along with order or direction obtained from the competent Court, if any, within 15 days. The respondent sent a reply dated 02.09.2022 requesting to release the gold bars to him *inter alia* stating that he is ready and willing to produce the purchase bill for having purchased the gold bars. According to the respondent, no reply has been received from the appellants and he was not provided any opportunity to produce the bill or made his submissions and therefore, he has filed the writ petition before the writ Court.

4. On notice, a counter affidavit was filed by the second appellant stating *inter alia* that the respondent had procured the gold bars from colombo and he smuggled it into Chennai in the form of paste. On a tip-off, he was interrogated and the gold bars were seized by following the procedures contemplated under Section 110 of the Act. Admittedly, the respondent did not possess any document or permit or import licence as required at the time of search. The value of the gold bars so seized from the respondent was assessed at Rs.36,18,045/-. The respondent had committed an offence punishable under Section 2 (33) of the Act and therefore, the goods are liable to be confiscated

under Section 111 (d) and (h) of the Act. The release of the goods is only provisional and not absolute and that, on culmination of the adjudication proceedings, the authority may grant the respondent an option to pay fine in lieu of confiscation under Section 125 of the Act. While so, a Mandamus, as prayed for by the respondent need not be granted at this stage. Accordingly, the appellants prayed for dismissal of the writ petition.

5. By order dated 23.08.2023, the learned Judge, upon hearing the counsel for both sides, allowed the writ petition filed by the respondent by referring to the earlier *order dated 20.04.2018 passed in WP (MD) No. 5148 of 2018 (Barakathnisa vs. Principal Commissioner of Customs, Chennai) which was followed in the case of A.Krishnamoorthy vs. Commissioner of Customs and others in WP(MD) No.3456 of 2022 etc. batch dated 30.03.2022),* wherein, it was held that the gold bars, which were attempted to be smuggled by mis-declaring the value of the goods, can be permitted to be cleared on payment of customs duty and such other security in the form of bank guarantee. Accordingly, the learned Judge directed the respondent herein to deposit the customs duty on the gold that was seized on 13.05.2022 together with penalty imposed in the order dated 27.03.2023 for a sum of Rs.4,00,000/- after obtaining necessary security towards the redemption fine that may be

imposed on the respondent-writ petitioner and on such payment, the gold bars were directed to be released. It was also observed that the third appellant herein shall decide the amount of redemption to be imposed on the respondent. The third appellant was also directed to conduct a de-novo proceedings and complete the same within a period of three months from the date of receipt of a copy of the order.

6. Aggrieved by the order dated 23.08.2023 passed in WP No. 29618 of 2022, the appellants are before this Court with the present appeal.

7. The learned counsel for the appellants, at the outset, submitted that the learned Judge granted the relief in favour of the respondent, which was not at all prayed for in the writ petition. The respondent has filed the writ petition praying to issue only a Mandamus, however, the learned Judge went on to set aside the Order-in-Original dated 27.03.2023 passed by the first appellant. Thus, the relief granted by the learned Judge is beyond the scope of writ petition and it is legally not sustainable. Continuing further, it is submitted that when the appellants have initiated adjudication proceedings, the respondent has to subject himself to such proceedings and wait for the outcome of the same, but he rushed to the writ Court and filed the writ petition, which is not maintainable. Thus, according to the learned counsel, the

relief granted by the learned Judge to return the confiscated goods to the respondent during the pendency of the adjudication proceedings is not warranted and is liable to be interfered with by this Court. In this context, the learned Senior Panel Counsel placed reliance on the decision of the Division Bench of this Court in ***Commissioner of Customs (Air), Custom House, No.60, Rajaji Salai, Chennai vs. Samynathan Murugesan and another [2009 SCC Online Madras 819 = (2009) 247 ELT 21]*** wherein it was held that the Additional Collector of Customs, in exercise of his discretion conferred under the Customs Act as well as the Import (Control) Order, 1955 read with the Import and Export (Control) Act, 1947, thought it fit not to grant any option to the first respondent for having smuggled the goods and instead directed to confiscate the goods. The Division Bench of this Court, taking note of the facts involved in that case, affirmed such decision of the Additional Collector of Customs in not giving any option to the first respondent therein and in confiscating the goods. In the present case, the first appellant had given an option to be exercised by the respondent by issuing a show cause notice dated 16.08.2022. Even though the respondent sent a reply dated 02.09.2022, without waiting for the conclusion of adjudication proceedings, he has filed the present writ petition, which was also erroneously allowed by the learned Judge, by order impugned herein.

8. The learned Senior Panel Counsel appearing for the appellants further submitted that the Order dated 30.03.2022 passed in WP (MD) No. 3456 of 2022, which was relied on by the learned Judge, is not applicable to this case. In that case, it was noticed that the gold jewellery seized from the passengers were a chain and a bracelet for their personal use. Therefore, it was thought it fit to direct release of those goods. Whereas, in the instant case, the respondent had smuggled the gold bars in the form of paste to avoid being detected during frisking. The gold bars smuggled in the form of paste by the respondent cannot be equated with that of the personal belongings, such as chain and bracelet in the case relied on by the learned Judge. Therefore, the learned Senior Panel Counsel prayed for allowing this writ appeal by setting aside the order of the learned Judge.

9. Per contra, the learned counsel for the respondent/writ petitioner submitted that in order to render complete justice, the learned Judge directed the appellants to return the confiscated gold bars to the respondent upon payment of Rs.4,00,000/- together with penalty to be determined by the appellants. By the said order, the interest of the department is fully secured and no prejudice will be caused to the appellants in any manner. The learned counsel further submitted that in all the cases, confiscation of the goods is not

warranted and therefore, in lieu thereof, payment of the customs duty together with penalty is also permissible. Thus, according to the learned counsel, the order of the learned Judge does not require any interference at the hands of this court.

10. However, the learned counsel for the respondent submitted that the matter may be remanded to the learned Judge for considering the issue afresh, on merits and in accordance with law, for which, the learned counsel for the appellants has no serious objection.

11. In view of the limited relief now sought by the learned counsel on either side and also considering the fact that the learned Judge, following the earlier orders passed in the writ petitions referred to above, and without examining the order-in-original passed by the adjudicating authority, has partly set aside the same, when the writ petition was filed only for a mandamus to release of the gold seized, this court, without going into the merits of the case, sets aside the order dated 23.08.2023 passed by the learned Judge in Writ Petition No. 29618 of 2022 and remands the matter to the learned Judge for considering the issue afresh, on merits and in accordance with law. We request the learned Judge to take up the writ petition and pass appropriate orders, as

expeditiously as possible, preferably, within a period of four weeks from the date of receipt of a copy of this judgment. In the mean while, the respondent / writ petitioner is directed to file a miscellaneous petition to amend the prayer made in the writ petition.

12. Accordingly, this writ appeal stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

[**R.M.D,J**] [**M.S.Q, J**]

13.02.2024

Internet : Yes
Neutral Citation : Yes/No
gya/rsh

To

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