IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.16297 of 2020

Kunchi Mohammad,
Kamaliya Plaza, Kasturba Road,
Doddapete, Shimoga – 577 202. ... Petitioner

Vs.

1.The Principal Commissioner of Customs,
AIU, Anna International Terminal,
Chennai Airport, Chennai – 600 027.

2.The Air Intelligence Officer,
AIU, Anna International Terminal,
Chennai Airport, Chennai – 600 027.

3.The Commissioner of Customs (Adjudication Air),
AIU, Anna International Terminal,
Chennai Airport, Chennai – 600 027.

4.The Superintendent of Customs (Adjudication Air),
AIU, Anna International Terminal,
Chennai Airport, Chennai – 600 027.

5.The Assistant Commissioner of
Customs (Adjudication Air),
Chennai – 600 027.

(R5 impleaded vide Order of this Court
dated 29.10.2024 in W.P.No.16297 of 2020) ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, to direct the first, third and fourth respondents to return the entire goods/foreign currency seized vide Seizure Memo No.433 of 2019-AIU dated 03.05.2019 forthwith with interest.

For Petitioner	:	Mr.T.Ramesh
For Respondents	:	Mr.M.Santhanaraman Senior Standing Counsel

ORDER

This Writ Petition has been filed for a Mandamus, to direct the first, third and fourth respondents to return the entire goods/foreign currency seized vide Seizure Memo No.433 of 2019-AIU dated 03.05.2019 forthwith with interest.

2. The case of the petitioner is that the petitioner while traveling to Malaysia was intercepted and was found carrying foreign currencies without proper declaration. Under these circumstances, cash that was in his possession seized from his person.

3. According to the learned counsel for the petitioner, the petitioner is not conversant with English and that he is only conversant with Malayalam, Kannada and Hindi. Despite the same, the statements under Section 110 of the Customs Act, 1962 were recorded in English.

4. Learned counsel for the petitioner submits that without issuing any Show Cause Notice, the respondents Department has retained the seized cash from the petitioner on 03.05.2019 despite several reminders.

5. Learned counsel for the petitioner refers to Section 110(1) of the Customs Act, 1962 and the proviso thereto and submits that the Show Cause Notice ought to have been issued within a period of 6 months or latest by another 6 months subject to the respondents Department complying with the requirements of the first proviso to Section 110 of the Customs Act, 1962.

6. On the other hand, the learned Senior Standing Counsel for the respondents submits that there is no merits in this writ petition. The learned Senior Standing Counsel for the respondent further submits that at the time of recording of Mahazar Statement on 03.05.2019, a statement was also obtained from the petitioner wherein, the petitioner has waived his right for issuance of the Show Cause Notice under Section 124 of the Customs Act, 1962 pursuant to which, Order-in-Original No.49/2020-2021-Commissionerate-1 has been passed by the Assistant Commissioner of Customs (Adjudication-AIR).

7. It is further submitted that the petitioner has also failed to respond to the personal hearing notice addressed to the petitioner. Instead, the petitioner has filed this writ petition for a Mandamus.

8. Having considered the submissions made by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents and the personal hearing notice and perusing the records before this Court including the statement dated 03.05.2019 indicating that the petitioner has waived issuance of the Show Cause Notice and Order-in-Original No.49/2020-2021-Commissionerate-1 of the Assistant Commissioner of Customs (Adjudication-AIR), I am of the view, the petitioner cannot ask for refund of the amount straight away.

9. Further, in the affidavit filed in support of this Writ Petition, the Jurat in the affidavit does not disclose that the petitioner was not conversant with English language and that the content of the affidavit was explained to the petitioner. *Prima facie*, there are indications that the petitioner is conversant with English language as otherwise the Jurat in the affidavit would have stated

that the content of the affidavit was explained to the petitioner before it was affirmed before the Vice Consul.

10. It is open for the petitioner to establish that the statements that were recorded forcefully at the time of seizure of the cash on 03.05.2019. It is open for the petitioner to establish that the statements relied by the respondents Department for waiver of the Show Cause Notice were not given by the petitioner. This has to be only before the Original Authority and not before this Court.

11. Since the petitioner has not participated in the original proceedings, to balance the interest of the petitioner and the respondents, this Court is inclined to mould the relief in this writ petition by quashing the Order-in-Original No.49/2020-2021-Commissionerate-1 passed by Assistant Commissioner of Customs (Adjudication-AIR) and remits the case back to the Assistant Commissioner of Customs (Adjudication-AIR) to redo the exercise. Therefore, the Assistant Commissioner of Customs (Adjudication-AIR) is *suo motu* impleaded as the fifth respondent.

12. The petitioner shall file a reply if any within a period of thirty (30) days from the date of receipt of a copy of this order, establishing that no statement was given by the petitioner for waiving issuance of Show Cause Notice under Section 124 of the Customs Act, 1962. Thereafter, orders shall be passed on the jurisdictional aspects as to whether indeed the petitioner had consented for waiver of Show Cause Notice subject to the final outcome. The amount that was seized from the custody of the petitioner shall be released strictly in accordance with the mandate of Section 110 of the Customs Act, 1962 after orders are passed.

13. This Writ Petition stands disposed of with the above observations. No costs.

29.10.2024

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

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To

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C.SARAVANAN, J.

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