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W.P.No.21528 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.08.2024

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.21528 of 2024

B.Harimogan

... Petitioner

Vs.

1.The Chief Commissioner of Customs,
Airport (Admin),
Anna International Terminal,
Chennai.

2.The Deputy Commissioner of Customs,
Airport (Admin),
Anna International Terminal,
Chennai.

3.The Assistant Commissioner of Customs,
Airport (Admin),
Anna International terminal,
Chennai.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents to consider the representations dated 06.06.2022, 12.01.2023 and 25.04.2024 and to provide the complete set of order copy in Original No.17/2011 (O.S.No.36/2010 - INT & O.S.No.918 of 2010 - (AIU) on the file of the respondent.



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For Petitioner : Mr.R.Bhalasubramaniom

For Respondents : Mr.G.Shanmugam
Junior Standing Counsel

ORDER

By consent, the writ petition is taken up for final disposal at the stage of admission itself.

2. The prayer in the writ petition is to issue a writ of mandamus, directing the respondents to consider the petitioner's representations dated 06.06.2022, 12.01.2023 and 25.04.2024 and to provide the complete set of order copy in Original No.17/2011 (O.S.No.36/2010 - INT & O.S.No.918 of 2010 - (AIU) on the file of the respondent.

3. According to the petitioner, he is a Power of Attorney agent representing one Farouk, who had purchased 536 gold coins (22 carats) weighing 4288 grams during his employment in France. Upon returning to India on 02.09.2010 at the Chennai Airport, the said Farouk was intercepted by the customs officials, who discovered the gold coins and 3000 Euros in his possession. The said Farouk, being uneducated and unaware of the requisite



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customs procedures, expressed his willingness to pay the applicable customs duties. However, the customs officials arrested him, and on 03.09.2010, he was produced before the learned Additional Chief Metropolitan Magistrate, E.O.II, Egmore, Chennai, who remanded him to judicial custody. He was later released on bail on 24.09.2010. After enquiry, the customs officials charged the said Farouk for the offences punishable under Sections 132 and 135(A) & (B) of the Customs Act, 1962, read with the Foreign Trade (Development and Regulation) Act, 1992. Consequently, the trial court convicted him; imposed a fine of Rs.10,000/-; and sentenced him to undergo two weeks imprisonment which shall be adjusted from the period already undergone by him. Further, the Trial Court directed the respondents to hand over all the seized items to the said Farouk after payment of penalty or disposal of the proceedings initiated by the customs department. Despite the same, the seized goods, including the gold coins and currency, remained in the custody of the respondent authorities. During 2019, the said Farouk, after returning to India, made several attempts to recover the seized items, but the same ended in vain. While so, he appointed the petitioner herein as his authorised agent through a registered document bearing No.123/2019 to act on his behalf to recover the seized property from the office of the respondent authorities.



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4. It is further stated that after pandemic covid-19 situation was over, the petitioner sent a representation dated 28.04.2021 to the first respondent, to which, he received a reply from the second respondent dated 24.06.2021 informing that as per the Order-in-Original No.17/2011 dated 12.05.2011, the subject gold was ordered for absolute confiscation and that, the seized foreign currency i.e., 3000 Euros was available for release subject to the payment of penalty of Rs.7,65,000/- imposed on the said Farouk. Immediately, the petitioner requested the second respondent to provide a copy of the said order, to which, by covering letter dated 05.05.2022, the third respondent sent an incomplete order copy. Since the said order copy cannot be challenged before the appellate authority, the petitioner made several representations from the year 2022, latest on 25.04.2024. However, the second respondent has not served the complete set of the order-in-original no.17/2011 to the petitioner. Hence, the petitioner is before this court with the present writ petition for the aforesaid relief.

5. The learned counsel for the petitioner submits that the petitioner made several representations to the respondents requesting to provide the complete set of the Order-in-Original, but nothing moved, till date. The



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respondents' failure to provide the same has prevented the petitioner from effectively challenging the order-in-original before the appellate authority.

The learned counsel would further submit that despite the trial court's direction, the petitioner has been unable to recover the seized items from the respondent authorities, for want of complete set of order-in-original. Hence, the learned counsel sought for appropriate orders from this court.

6. On the other hand, the learned Junior Standing Counsel appearing for the respondents submits that the representations of the petitioner will be considered, and necessary orders will be passed within a time frame to be fixed by this Court.

7. Considering the facts and circumstances of the case and having regard to the submissions made by the learned counsel on either side, this Court, without going into the merits of the matter, directs the respondents to consider the latest representation of the petitioner dated 25.04.2024 and pass appropriate orders, on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order.



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8. With the above directions, the writ petition is disposed of. There is no order as to costs.

12.08.2024

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

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To

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KRISHNAN RAMASAMY.J.,

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