



W.P.No.28889 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2024

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THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

Writ Petition No.28889 of 2023 and
W.M.P.Nos.28466, 28467 & 28469 of 2023

Smt.Regenna J.Murali
Trustee, Jeppiaar Educational Trust,
Residing at Jeppiaar Educational Collage,
Old Mahabalipuram Road,
Chennai-600 119.

... Petitioner

-VS-

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

2.The Assistant Director,
Directorate of Revenue Intelligence,
27, G.N.(Chetty) Road,
T.Nagar, Chennai-600 017.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records



W.P.No.28889 of 2023

relating to the impugned order dated 13.07.2022 in F.No.S/26-Misc-120/2022-23 Gr VB JNCH of the 1st respondent and quash the same and direct the 1st respondent to release the vehicle bearing registration No.PB 36J 7999 without insisting for any security or deposit along with its original Registration Certificate.

For Petitioner : Mr.Hari Radhakrishnan
for Mr.Kumarpal R Chopra

For Respondents : Mr.V.Sundareswaran,
Senior Standing Counsel

ORDER

An order dated 13.07.2022 directing the conditional provisional release of a Toyota Land Cruiser vehicle bearing Registration No.PB-36J-7999 is under challenge.

2.The above mentioned vehicle was imported into India by Mr.Khou Zaiyaoza, who was then a diplomat of the Embassy of the Lao People's Democratic Republic, New Delhi. Such import was made without payment



W.P.No.28889 of 2023

of duty on condition that the vehicle should not be sold by the diplomat. It appears that the vehicle was sold by the diplomat in breach of conditions of import and was eventually purchased by the petitioner herein. In those circumstances, the vehicle was seized under seizure memo dated 26.04.2022 under Section 110 of the Customs Act, 1962. Upon the petitioner applying for provisional release, the impugned order was issued imposing three conditions in relation thereto. Aggrieved by the first and third conditions, the present petition was filed.

3. Learned counsel for the petitioner submits that the infraction of import conditions was committed by the diplomat who imported the vehicle and that the petitioner should not be mulcted with the liability of paying the entire differential duty and executing a bank guarantee for a sum of Rupees one crore. He points out that the diplomat concerned and the Embassy of the Lao People's Democratic Republic admitted liability to discharge customs duty, as recorded in paragraph 5.1 of the show cause notice dated 27.09.2022. By referring to orders issued by the Karnataka High Court, Telangana High Court and the Kerala High Court in similar situations,



W.P.No.28889 of 2023

learned counsel submits that the conditions imposed under the impugned order may be modified so as to permit provisional release against the petitioner paying 50% of the duty along with a bond as per the impugned order.

4. These contentions are countered by Mr.V.Sundareswaran, learned senior standing counsel. He points out that the import condition was undisputedly breached by the diplomat. By adverting to the judgment of the Delhi High Court in *Nipun Miglani v. Intelligence Officer and others*, (2022) SCC OnLine Delhi 4704, he contends that the writ petition was dismissed by the Delhi High Court with costs in substantially similar facts and circumstances. He also refers to the order of this Court in W.P.No.7522 of 2023 dated 09.08.2023, whereby a similar writ petition was dismissed. He also refers to paragraph 5.3 of the show cause notice dated 27.09.2022 to contend that Mr.Jatin Ahuja of Big Boy Toys had agreed to bear liability and not the diplomat concerned.



W.P.No.28889 of 2023

5. The import was made by the Third Secretary, Embassy of the Lao People's Democratic Republic, New Delhi. Both under the Vienna Convention on Diplomatic Relations, 1961 and the Vienna Convention on Consular Relations, 1963, respectively, diplomats and consular officials are provided immunity, albeit the extent thereof varies. Since the importer appears to be from the Embassy of the Lao People's Democratic Republic, and is currently not in India, it is highly unlikely that the Customs Department would be in a position to recover the duty from the original importer. In those circumstances, I am not inclined to accede to the request that the petitioner be permitted provisional release against payment of 50% duty. At the same time, it appears *prima facie* that the petitioner was a *bona fide* purchaser who purchased the vehicle not directly from the diplomat who imported it, but after it was transferred to other individuals in India. In those circumstances, it would be onerous and unreasonable to impose the requirement of the execution of a bank guarantee for a sum of Rupees one crore.



W.P.No.28889 of 2023

6. For reasons set out above, W.P.No.28889 of 2023 is disposed of by modifying the conditions imposed under the impugned order by deleting the requirement under serial No.3 thereof pertaining to the provision of a bank guarantee for a sum of Rupees one crore. Subject to fulfilment of the two subsisting conditions in the impugned order, the vehicle shall be provisionally released within a period of one week. There will be no order as to costs. Consequently, connected miscellaneous petitions are closed.

22.02.2024

Index : Yes / No

Internet : Yes / No

Neutral Citation: Yes / No

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To

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