IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **01.02.2024**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.Nos.30507, 31078 and 31115 of 2023
and W.M.P.Nos.30151, 30152, 30708, 30711, 30741 and 30742 of 2023

Rajkiran Kannan ... Petitioner in W.P.30507 of 2023

Eburamusa Sherif ... Petitioner in W.P.31078 of 2023

G.Indraprasath ... Petitioner in W.P.31115 of 2023

-vs-

1.The Principal Commissioner of Customs,
Chennai (Airport)
Office of the Principal Commissioner of
Customs (Air Cargo), Chennai-I Commissionerate,
New Customs House, Meenambakkam,
Chennai - 600 016.

2.The Assistant Director of Customs,
Directorate of Revenue Intelligence,
27, G.N.Chetty Road, T.Nagar,
Chennai - 17.

3.The Senior Intelligence Officer,
Directorate of Revenue Intelligence,
27, G.N.Chetty Road, T.Nagar,
Chenai - 17. ... Respondents in all WP's

PRAYER in W.P.No.30507 of 2023: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus calling for records and quash the intimation / order dated 20.05.2023 (Received on 23.05.2023) passed by the first respondent in his proceedings DIN: 20230573MU000081850E as being illegal, ultravires the Constitution and consequently directing the respondents to return the amount of Rs.2,04,00,000/-.

PRAYER in W.P.No.31078 of 2023: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus calling for records and quash the intimation / order dated 20.05.2023 (Received on 23.05.2023) passed by the first respondent in his proceedings DIN: 20230573MU000081850E as being illegal, ultravires the Constitution and consequently directing the respondents to return the amount of the Indian Currency of Rs.1,24,500/- and 1689 Grams of Gold.

PRAYER in W.P.No.31115 of 2023: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus calling for records and quash the intimation / order dated 20.05.2023 (Received on 23.05.2023) passed by the first respondent in his proceedings DIN: 20230573MU000081850E as being illegal, ultravires the Constitution and consequently directing the respondents to return / release the Indian Currency of Rs.5,88,000/-.

For Petitioner in all WP's : Mr.D.Baskar

For Respondents in all WP's : Mr.V.Sundareswaran, Sr. SC

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COMMON ORDER

In all these writ petitions, an intimation issued under Section 110(2) of the Customs Act, 1962 is assailed by the respective petitioner.

2. The case falls within a very narrow compass. Proceedings were initiated against the respective petitioner with regard to alleged smuggling of gold. Initially, there was arrest and remand. The statements of persons connected with the alleged smuggling were recorded in December and January 2022-2023. Based on a request letter dated 15.05.2023 from the Principal Assistant Director General, Directorate of Revenue Intelligence, the Principal Commissioner of Customs issued the impugned intimation extending the period for issuance of show cause notice under Section 124 of the Customs Act, 1962 (the Customs Act) by a period of six months, i.e., from 20.05.2023 to 25.11.2023.

3. Learned counsel for the petitioner invited my attention to Section 110(2) of the Customs Act and pointed out that the provision as it stood prior to 29.03.2018 required that sufficient cause be shown

as a pre-condition for extension. By placing reliance on the following judgments, learned counsel contended that Section 110(2) was interpreted, prior to its amendment, as requiring hearing the person affected before issuing an order of extension:

(i) M/s.Shree Gold Art Private Limited Through Mr.Manindra Samanta v. Union of India and others W.P.(C).1166/2021, judgment dated 22.12.2023.

(ii) Maj.Dimple Singla v. Union of India, judgment dated 06.02.2008, Punjab and Haryana High Court.

4. After the amendment, he submits that reasons for extension are required to be recorded in writing and the person from whom goods were seized is required to be informed. Although Section 110(2) was amended to provide that reasons in writing should be recorded, by referring to the judgment of the Supreme Court in *Assistant Commissioner, Commercial Tax Department Works, Contract & Leasing, Kota v. M/s.Shukla & Brothers 2010(4) SCC 785*, learned counsel submits that reasons in writing should be recorded on the basis of materials on record.

5. As regards the impugned order, learned counsel submits that the reason recorded therein was that investigation is being delayed due to key persons remaining at large, whereas no further statements were recorded after 20.05.2023 and the same is evident from the show cause notice issued subsequently on 24.11.2023. Since the impugned communication was issued without objectively considering the relevant material, he submits that the impugned communication is liable to be interfered with.

6. Mr.V.Sundareswaran, learned senior standing counsel, submits that the only requirements of amended Section 110(2) are that reasons in writing should be recorded and that persons from whom the goods were seized should be informed. According to him, both these conditions were satisfied.

7. The case turns entirely on the interpretation of sub-section (2)

of Section 110. The said provision is set out below:

> *"Where any goods are seized under sub-section (1) and no notice in respect thereof is given under clause (a) of section 124 within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized:*
> *[Provided that the Principal Commissioner of Customs or Commissioner of Customs may, for reasons to be recorded in writing, extend such period to a further period not exceeding six months and inform the person from whom such goods were seized before the expiry of the period so specified:*
> *Provided further that where any order for provisional release of the seized goods has been passed under section 110A, the specified period of six months shall not apply.] [Substituted by Finance Act, 2018 (Act No.13 of 2018), dated 29.03.2018.]*

8. The first proviso to sub-section (2) confers discretion on the Principal Commissioner of Customs or Commissioner of Customs to extend the period specified in sub-section (2) by a further period not exceeding six months. The proviso also specifies the two conditions or pre-requisites in such regard. They are:

(i) Record reasons in writing;

(ii) Inform the persons from whom such goods were seized before the expiry of the original six month period.

9. As regards the second condition of being informed, the respective petitioner admits to being informed about the extension. All that remains is to examine whether reasons were recorded in writing. Turning to the impugned communication, in relevant part, it is recorded therein as under:

> "*Whereas it appears from the facts brought before me that the investigation into the case was delayed due to key persons involved in the case being at large and examination of those persons being stalled until the late stage of investigation and that the investigation in the case could not be completed due to failure of key persons joining investigations and thus bring the investigation to its logical conclusion. A case has been made out for grant of extension of time limit for issuance of Show Cause Notice;*
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> *And whereas I am satisfied that further investigation needs to be carried out in the case in order to probe the role of the key persons involved in this larger conspiracy to smuggle gold into India in as much as the impugned goods are liable to confiscation under Section 111 of the Custome Act, 1962 read with other Acts and Rules in force for the time being and the persons found guilty are liable for personal penalty under Section 112 ibid*

and to bring the case to its logical conclusion;"

10. From the above extracts, it appears that the Principal Commissioner of Customs concluded that the investigation was delayed due to key persons, who are involved in the case, being at large and therefore their examination being stalled. For such reason, he also concluded that further investigation is required to be carried out and that an extension of time is necessary. These conclusions are said to have been reached on the basis of facts placed before the Principal Commissioner of Customs. It certainly cannot be inferred from the above that reasons in writing were not recorded.

11. The other aspect to be taken into account is whether the recorded reasons are germane to the extension. Since it is recorded therein that the investigation was delayed due to persons being at large and that such persons are required to be examined or questioned in relation to the case, it certainly cannot be said that the recorded reasons are not germane to the extension.

12. At the highest, the petitioner may be in a position to say that sufficient reasons were not recorded. However, in exercise of discretionary jurisdiction, it is ordinarily not appropriate to examine the sufficiency of reasons because appellate jurisdiction is not being exercised. Therefore, no case is made out for interference with the impugned intimation. Since learned counsel for the petitioner submits that the seized goods were disposed of, it is open to the petitioner to assail such disposal in accordance with law.

13. W.P.Nos.30507, 31078 and 31115 of 2023 are disposed of on the above terms. Consequently, W.M.P.Nos.30151, 30152, 30708, 30711, 30741 and 30742 of 2023 are closed.

01.02.2024

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Index : Yes / No
Internet : Yes / No
Neutral Citation: Yes / No

To

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Office of the Principal Commissioner of
Customs (Air Cargo), Chennai-I Commissionerate,
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SENTHILKUMAR RAMAMOORTHY,J

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