BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.04.2024

CORAM

JUSTICE N. SESHASAYEE
and
JUSTICE P.VADAMALAI

W.A.(MD) No.104 of 2018
and
C.M.P.(MD).No.521 of 2018

K. Zeawdeen ... Appellant / Petitioner

Vs.

The Assistant Commissioner (Airport),
Office of the Assistant Commissioner of Customs,
International Airport,
Pudukottai Road,
Sembattu, Trichy. ... Respondent / Petitioner

Prayer: Appeal filed under Clause 15 of Letters Patent Act to set aside the order dated 24.11.2017 passed in W.P.(MD).No.20286 of 2017 and allow the above Writ Appeal.

For Appellant : Mr.M.Murualikumaran
for Mr.M.Siddharthan

For Respondent : Mr.R.Nandakumar

JUDGMENT

(Judgment of the Court was delivered by **N.SESHASAYEE, J.**)

This Writ Appeal is directed against an order of the learned Single Judge in W.P.(MD).No.20286 of 2017 dated 24.11.2017, in which, the appellant herein had challenged an order of the respondent in his proceedings in Original No. 196 of 2017 dated 08.10.2017 passed in O.S.No.123 of 2017.

2. According to the appellant, some time earlier to the aforesaid impugned proceedings of the respondent, he had gone with his family to Malaysia and on return, the respondent has seized certain gold jewellery which his wife and relative were wearing and despite his plea that they were wearing them even prior to visit to Malaysia, the authorities did not pay a heed to the same and proceeded to pass an order of confiscation vide proceedings referred above.

3. When this order was challenged before the learned Single Judge, he merely directed the appellant herein to prefer an Appeal under Section 128 of the Customs Act, 1962. This order is now under challenge.

4. Heard the learned counsel on either side.

5. Whether the gold jewellery involved in the confiscation order is liable for confiscation is a question of fact and that cannot be conveniently be done in this jurisdiction. Necessarily, the appellant may have to invoke Section 128 of the Customs Act, 1962. To Emphasize it is not only because that there is an effective alternative remedy available which concerns the Court now, but, because this Court cannot embark on a fact finding in exercise of its jurisdiction under Article 226 of the Constitution of India, and hence, an appeal under Section 128 of the Customs Act, 1962, will be an ideal option. As far as preferring an appeal is concerned, it must be filed within a period of sixty days. But given circumstances where the appellant has wrongly invoked the jurisdiction of this Court, the entire time spent before this Court may have to be deducted in computing limitation.

6. The appellant is now required to prefer an appeal within a period of four (4) weeks from the date of receipt of a copy of this order, and the Appellate Authority will receive the said appeal without reference to limitation.

7. This Writ Appeal is accordingly dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(N.S.S., J.) **(P.V.M., J.)**
24.04.2024

NCC : Yes/No
Index : Yes/No
Internet : Yes
TSG

<u>Note :</u> Issue Order Copy by 25.04.2024

To
The Assistant Commissioner (Airport),
Office of the Assistant Commissioner of Customs,
International Airport,
Pudukottai Road,
Sembattu, Trichy.

N. SESHASAYEE, J.
and
P.VADAMALAI, J.

TSG

W.A.(MD) No.104 of 2018

24.04.2024