BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.10.2024

CORAM:

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.(MD) No.25694 of 2024

Nisahsanti Moorthy ... Petitioner

-vs-

1.The Commissioner of Customs,
No.1, Williams Road, Cantonment,
Trichy - 620 001.

2.The Joint/Additional Commissioner of Customs (Airport),
No.1, Williams Road,
Cantonment,
Trichy - 620 001.

3.The Assistant Commissioner of Customs (AIU),
Trichy Airport,
Trichy - 620 007.

4.The Superintendent of Customs,
Air Intelligence Unit,
Trichy Airport,
Trichy - 620 007. ... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a writ of certiorarified mandamus, to call for the records relating to the Seizure Order made by the 4th respondent herein in O.R.No.16/2024-AIU, Trichy, dated 14.03.2024, and quash the same as illegal and consequently direct the respondents herein to permit the petitioner to take back/Re-export the Gold Jewellery viz. Two Gold Chains and Six Gold Bangles weighing 499.400 grams valued at Rs.30,21,370/- to Singapore covered by O.R.No.16/2024-AIU, Trichy, or to order for release and return of the Two Gold Chains and Six Gold Bangles totally weighing 499.400 grams covered by O.R.No.16/2024-AIU, Trichy, in so far as the petitioner is concerned.

For Petitioner : Mr.A.K.Jayaraj

For Respondents : Mr.R.Nandha Kumar,
Senior Standing Counsel.

ORDER

Though this Writ Petition has been filed for issuance of a writ of of certiorarified mandamus to call for the records challenging the Seizure Order made by the 4th respondent, dated 14.03.2024, and further direct the respondents to permit the petitioner to take back/re-export the Gold Jewellery viz., Two Gold Chains and Six Gold Bangles, weighing 499.400 grams, valued at Rs.30,21,370/- to Singapore or to order for release and return of the said goods, it is submitted by the learned counsel for the petitioner that the prayer would be confined to a mandamus for release of the goods.

2. It is submitted by the learned counsel for the respondents that show cause notice has already been issued to the petitioner pursuant to the above seizure.

3. Learned counsel for the petitioner would then place reliance upon the following judgments of this Court, wherein this Court has directed the release of the goods seized, subject to complying with 50% of the duty payable. The said judgments are as follows :

1. W.P.No.1421 of 2011, dated 28.02.2011.

2.W.P.No.21194 of 2014, dated 08.10.2014

3.W.P.No.2968 of 2016, dated 29.02.2016

4.W.P.No.5148 of 2018, dated 20.04.2018

5.W.P.(MD) No.3125 of 2018, dated 21.02.2018

It is thus submitted that similar orders could be passed.

4. Before proceeding to examine the above contention, it is relevant to extract Section 110 A of the Customs Act, 1962, which reads as under :

> "*110A. Provisional release of goods, documents and things seized pending adjudication.*
>
> *- Any goods, documents or things seized under section 110, may, pending the order of the adjudicating officer, be released to the owner on taking a bond from him in the proper form with such security and conditions as the Commissioner of Customs may require.*"

5. A reading of the above provision would suggest that the provisional release of goods, documents and things seized, pending order of adjudication, may be released to the owner by the adjudicating authority, subject to taking a bond from him in proper form with such security and conditions.

6. It thus appears that the provisional release of the goods and attachment thereof is a discretion vested with the adjudicating authority and, therefore, it is only appropriate that the authority, which is vested with the discretion under the statute, exercise the same.

7. It is trite law that the power of judicial review under Article 226 of the Constitution of India though very wide, nevertheless, this Court would neither exercise the discretion vested with the statutory authority nor direct the manner in which the authority must exercise the discretion.

8. In view thereof, I am of the view that the petitioner may file an application under Section 110A of the Customs Act,1962, if it is not actually filed by now. If it is already filed, the same shall be considered by the appropriate authority, taking into account the submissions that may be made

and also the judgments that may be relied upon by the petitioner and, thereafter, the authority shall pass orders in accordance with law, after hearing the petitioner, within a period of two weeks.

9. Writ Petition is disposed of accordingly. No costs. Consequently, the connected W.M.P.(MD) Nos.21782 and 21783 of 2024 are closed.

25.10.2024

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

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MOHAMMED SHAFFIQ, J.

dixit

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