



C.M.A.Nos.3773 to 3388 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2025

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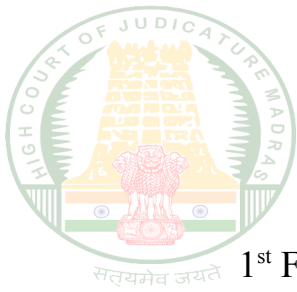
THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE G. ARUL MURUGAN

**C.M.A.Nos.3773, 3780, 3774, 3775, 3776, 3785, 3777, 3778, 3779,
3781, 3784, 3786, 3782, 3783, 3787 & 3788 of 2010
and M.P.Nos.1 to 1 of 2010 (16 Nos.)**

G.V.Ramesh	 Appellant in CMA.No.3773 of 2010
T.B.Lakshminarayanan	 Appellant in CMA.No.3774 of 2010
Kathiravan	 Appellant in CMA.No.3775 of 2010
M.Janakiraman	 Appellant in CMA.No.3776 of 2010
Partheeban	 Appellant in CMA.No.3777 of 2010
M.Saravanan	 Appellant in CMA.No.3778 of 2010
G.Mariappan	 Appellant in CMA.No.3779 of 2010
N.Manikandan	 Appellant in CMA.No.3780 of 2010
Nandapuneedi Narasimhan	 Appellant in CMA.No.3781 of 2010
P.Rajavel	 Appellant in CMA.No.3782 of 2010
C.Periyasamy	 Appellant in CMA.No.3783 of 2010
Samsuden Syed Mohamed	 Appellant in CMA.No.3784 of 2010
P.Ayyasamy Sekar	 Appellant in CMA.No.3785 of 2010
K.Govindasamy	 Appellant in CMA.No.3786 of 2010
C.Anandaraj	 Appellant in CMA.No.3787 of 2010
K.Murugan	 Appellant in CMA.No.3788 of 2010

Vs

1.Customs, Excise and Service tax Appellate Tribunal,
South Zonal Bench,
Shastri Bhavan Annexe,



C.M.A.Nos.3773 to 3388 of 2010

1st Floor, 26, Haddows Road,
Chennai 600 006.

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2. Commissioner of Customs,
AIR, ACC, Meenambakkam,
Chennai.

.... Respondents in all CMAs

COMMON PRAYER: APPEALS filed under Section 130(1) of the Customs Act, 1962, against the Common Final order No.1980/2009 to 1995/2009 dated 24.12.2009 passed by the Customs, Excise and Service tax Appellate Tribunal, Chennai.

(In all CMAs)

For Appellants : Mr.B.Satish Sundar
for Mr.A.Ganesh

For Respondents : Mr.A.P.Srinivas (for R2)
Senior Standing Counsel

R1 - Tribunal

COMMON JUDGMENT
(Delivered by Dr.ANITA SUMANTH.,J)

This common order disposes 16 Civil Miscellaneous Appeals, where the challenge is to a common order dated 24.12.2009 of the Customs, Excise and Service tax Appellate Tribunal, Chennai (in short 'Tribunal'/'Cestat').

2. We have heard Mr.B.Satish Sundar, learned counsel appearing for Mr.A.Ganesh, learned counsel for the appellants and Mr.A.P.Srinivas,



learned Senior Standing Counsel for R2/Customs Department.

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3. The genesis of the proceedings are the events of 07.12.2007 and thereafter, when the officers of the Directorate of Revenue Intelligence (DRI), based on intelligence gathered by them, commenced operations in the arrival hall of the Anna International Airport, Chennai in terms of the provisions of the Customs Act, 1962 ('Act'). The Customs Officers were requested to be witness to the proceedings.

4. Intelligence had been received by the DRI to the effect that certain individuals were engaged in smuggling of gold jewellery from Singapore to India with accomplices. Their modus operandi was to engage the services of passengers on Chennai-bound flights from Singapore who had stayed abroad for more than six months on work permit ('eligible passengers'). Their associates in Singapore would handover parcels containing gold jewellery to the eligible passengers and the individuals would have the same collected on their arrival in Chennai.

5. The passengers would be instructed not to declare the gold jewellery and to pass through the green channel. On exiting the terminal, they were asked to handover the parcels to persons in a designated vehicle, the number of which was furnished to them in advance.



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6. Having coming to know of the proposed modus operandi, the officers arrived at the Airport and, as expected, found a Toyota Qualis bearing Registration No.TN 04 M 9595 ('vehicle') in the designated location. Enquiry was caused and the occupants of the vehicle stated that they were employed by one Ramesh, Proprietor of Abirami Jewellers, Chennai, a wholesaler in gold jewellery ('Proprietor').

7. The vehicle was searched and various materials and incriminating documents were found. This included lists of names, passport numbers, photographs and Indian currency. One, Lakshmi Narayanan, an occupant of the vehicle, confessed that the details on the lists related to passengers who would be carrying packets of gold jewellery and Singapore dollars ('SGD'/'forex'). Upon receipt of the gold and foreign currency, the INR in their possession was to be paid to those passengers as carrying charges.

8. 12 passengers were intercepted on flight IX681 on 07.12.2007 and one passenger was intercepted on flight IC556 on 07.12.2007. On verification of the materials carried by the passengers, the officers formed a reasonable belief that the documents and the currency were incriminatory and seized the same under the relevant provisions of the Act.

9. Upon obtaining permission from the Airport Manager for the



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entry of the occupants of the vehicle, they were positioned in the arrival lounge. The first passenger who arrived was Muthali Pachamuthu. The aforesaid passenger and one, P.Ramatchandiran Manicame, have not filed appeals challenging the proceedings.

10. Muthali Pachamuthu was searched following due process and found to be in possession of 2 polythene packets containing gold jewellery and 500 SGD. The passenger confirmed having collected the gold and forex from an anonymous person in the Singapore airport, whose physical characteristics alone he was able to recount.

11. His instructions were that he would be paid Rs.2,500/- by a person at the Chennai Airport, who would identify him and show him his photograph taken at the time of handing over of the jewellery and Forex at the Singapore Airport and that person would collect the material and pay the collection charges. In the event that he was apprehended, he had been advised to use the SGD to pay the duty.

12. The officers verified the baggage declaration form submitted by him and found that no gold or jewellery had been declared. The gold jewellery weighing 488 gms and 500 SGD were seized as goods smuggled into India.



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13. In this drama, G.V.Ramesh, Proprietor of Abirami Jewellers is the Protagonist (CMA No. 3773/2010) and the four occupants of the Toyota Qualis Car, viz., T.B.Lakshmi Narayanan (CMA No. 3774/2010), D.Kathiravan (CMA No. 3775/2010), Janakiraman (CMA No. 3776/2010) and Parthiban (CMA No. 3777/2010), have been named as Abettors.

14. M.Saravanan (CMA No. 3778/2010), M.Mariappan (CMA No. 3779/2010), N.Manikandan (CMA No. 3780/2010), N.Narasimhan (CMA No. 3781/2010), P.Rajavel (CMA No. 3782/2010), C.Periasamy (CMA No. 3783/2010), P.Samsudin (CMA No. 3784/2010), P.Ayyasamy (CMA No. 3785/2010), K.Govindaraj (CMA No. 3786/2010), C.Annadurai (CMA No. 3787/2010), K.Mariappan (CMA No. 3788/2010) are the passengers who play a supporting role.

15. Proceedings similar to those in the case of the passengers referred to supra, transpired in the case of the other appellants as well. Two sample Mahazars, both dated 07.12.2007 are placed on record chronicling the events of 07.12.2007 when the aforesaid events had unfolded in the Anna International Terminal leading to the seizures of the gold and forex brought illegally into the country.

16. Notices were issued to the Proprietor of Abirami Jewellers and



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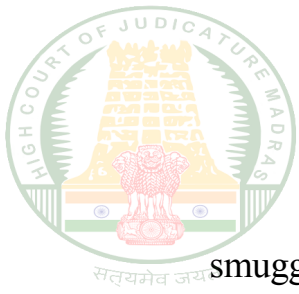
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the other 15 persons calling upon them to show cause why the gold jewellery of 6200 gms valued at 58.28 lakhs brought in by the passengers without payment of duty, not be confiscated under Sections 111(d), 111(l) and 111(m) of the Act read with relevant clauses of the Foreign Trade Policy, why the Forex (SGD 6500) seized from the 13 passengers not be confiscated and why penalty under Section 112 not be imposed on each of them.

17. The Proprietor of Abirami Jewellers was asked to show cause why 10,000 SGD seized from his premises not be confiscated, the Toyota Qualis Car bearing Registration No.TN 04 M 9595 used in the smuggling of goods and seized not be confiscated and why penalty not be imposed for not honouring the summons issued by the competent authority.

18. Four of the occupants of the vehicle who had voluntarily and willingly participated in the execution of the master plan were held, prima facie, to have abetted in the smuggling activity and were asked to show cause why the amount of Rs.54,000/- seized from their possession not be confiscated and why penalty not be imposed.

19. One Vijay, who was also found to have been involved in the meticulous planning and execution of the modus operandi and abetted the



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smuggling activity was asked to show cause why penalty under Section 112(b) of the Act not be imposed on him.

20. Replies were filed by the noticees objecting to the proceedings and asking for a personal hearing. After hearing the noticees the proceedings culminated in orders-in-original passed by the Commissioner of Customs (Airport) on 04.12.2008. In the order-in-original, the Commissioner confirms most of the proposals in the show cause notices ordering absolute confiscation of the gold and Forex, imposing penalties as proposed, confiscating the Toyota Qualis car that may be redeemed on payment of fine of Rs.1.00 lakh and ordering release of the Indian currency seized from one of the occupants of the Toyota Qualis car.

21. A corrigendum was passed on 29.01.2009 correcting certain typographical errors and imposing personal penalty on each of the 13 passengers for their role in the smuggling operation.

22. Appeals were filed before the Cestat/Tribunal that have culminated in the impugned order dated 24.12.2009. Before the Cestat, the appellants had argued that the entire scheme of events had been misunderstood by the customs authorities. They pointed out that they had been intercepted before they had had a chance to proceed to declare the



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gold and Forex which they had fully intended to do.

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23. Their pointed submission was that, had they been apprehended with the gold and Forex at the point of exit, it would have been another matter altogether. However, since they had been intercepted even prior thereto, the Department has not made out a case for smuggling. There is no prohibition against the import of gold/jewellery. Hence there can be no absolute confiscation and they must be permitted to redeem the jewellery on payment of redemption fine and appropriate duty under Section 25 of the Act.

24. They had cited orders of the Tribunal in similar circumstances as the present matters, where fine and penalty had been reduced to a fraction of the amounts imposed originally. As regards the 4 appellants other than the 13 passengers, it was argued that they are wholly unconnected with the alleged smuggling and hence should not have to face the brunt of adversarial action.

25. On the other hand, the Department had submitted that the declaration forms signed by the passengers did not contain any disclosure in regard to the gold jewellery or Forex. This one factor would establish the falsity of their case. All 13 passengers had given statements to the



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effect that the gold and Forex did not belong to them. They had acceded to merely being carriers for cash.

26. Though their statements dated 07.12.2007 had been initially retracted on 12.12.2007, by a strange quirk of circumstances, the retractions were retracted subsequently. They had also admitted that the retractions made earlier were under coercion and pressure from the Proprietor of Abirami Jewellers.

27. The Tribunal has noted that the passengers had clearly conceded that they did not know English and all the pleadings before the authorities including the appeals before the Tribunal had been prepared by those who had engaged their services and they had merely signed the same.

28. The Tribunal has recorded the factual position that the above modus operandi was being followed by the Proprietor of Abirami Jewellers and his associates systematically, and several times in the past as well. The Department had submitted that identical transactions involving gold and Forex had taken place on 96 occasions earlier and only on 7 occasions had duty been paid. It was this recurring scheme of events that had caught the eyes of the authorities, paving the way for the operation in the airport on 07.12.2007.



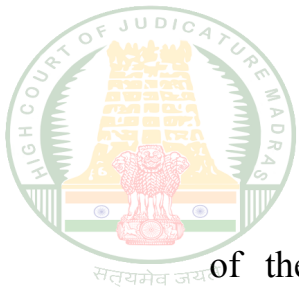
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29. The Department relied upon the judgments of the Supreme Court in *Sheikh Mohd. Omer V. Collector of Customs*¹ and *Om Prakash Bhatia V. Commissioner of Customs*² on the point that import of gold jewellery without filing necessary declarations could only be with a view to evade payment of customs duty. In such circumstances, the goods would have to be considered as prohibited goods and no release of the same should be considered.

30. The Tribunal considered the case in detail noting the evidence on the basis of which the authorities had passed orders. After considering the result of the investigation and enquiry as well as the facts before them, they were of the impression that there was more than a preponderance of probabilities on the basis of which the Commissioner had arrived at the conclusion of smuggling.

31. They placed special emphasis on the Disembarkation Card that had been filled in by the 13 passengers. That Card is divided into two portions, and the top portion retained by the Immigration authorities is filled in by the passengers. The lower portion containing the stamp of the Immigration is handed over to the passenger. The forms in the possession

1 1983 (13) ELT 1439 (SC)
2 2003 (155) ELT 423



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of the Immigration authorities had been produced by the Customs Department before the Cestat and revealed that the passengers had filled in the forms in their own handwriting. As against column No.5, where the value of dutiable goods ought to have been declared, they had filled in either nil or insignificant amounts such as Rs.1,000 or Rs.2,000.

32. Clearly, the attempt was to avoid any payment of duty on the goods, since the value of the gold in each case ranges between Rs.4,27,700 and Rs.4,70,940/-. On these facts, the Tribunal held that non-declaration and the intention not to declare, had been established.

33. The appellants had relied upon Circular dated 22.02.2001 which has also been cited by the learned counsel for the appellants before us. They have also cited the following decisions in support of their submissions:

- i) *Abdulla Kalingal Andu v. Union of India*³
- ii) *Shaik Shahabuddin v. Commissioner of Customs, Chennai*⁴
- iii) *State of Maharashtra v. Anil Bhagchand Jain*⁵
- iv) *Hargovind Das K.Joshi v. Collector of Customs*⁶
- v) *Kamlesh Kumar v. Collector of Customs*⁷
- vi) *Mohit Thakore v. Collector of Customs, New Delhi*⁸

3 1994 (71) E.L.T. 349 (Bom.)

4 2001 (137) E.L.T. 127 (Tri. – Chennai)

5 1990 (47) E.L.T. 250 (Bom.)

6 1992 (61) E.L.T. 172 (S.C.)

7 1993 (67) E.L.T. 1000 (G.O.I.)

8 1994 (72) E.L.T. 865 (Tribunal)



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- vii) *In re: Jaspal Singh Banty*⁹
viii) *Shaik Jamal Basha v. Government of India*¹⁰
ix) *Sapna Sanjeev Kohli v. Commissioner of Customs, Mumbai*¹¹
x) *Yakub Ibrahim Yusuf v. Commissioner of Customs, Mumbai*¹²
xi) *T.Elavarasan v. Commissioner of Customs (Airport), Chennai*¹³
xii) *Commissioner of Customs v. Dinkar Khindria*¹⁴
xiii) *Palaniappan v. Principal Commissioner of Customs, Chennai-I*¹⁵
xiv) *Commissioner of Customs (AIR), Chennai-I v. Samynathan Murugesan*¹⁶
xv) *Commissioner of Customs (AIR), Chennai-I v. P.Sinnasamy*¹⁷
xvi) *K.R.Ahmed Shah v. Additional Collector of Customs, Madras*¹⁸
xvii) *In Re: Shabbir Eshakali Patanwala*¹⁹
xviii) *Rajan Ran v. Commissioner of Customs, Chennai*²⁰
xix) *Commissioner of Customs (Preventive) v. Uma Shankar Verma*²¹
xx) *V.P.Hameed v. Collector of Customs, Bombay*²²
xxi) *K.Baluchamy v. Commissioner of Customs, Trichy*²³
xxii) *Ashraf Puliyulla Parambil v. Commr. of Cus., (Airport), Chennai*²⁴
xxiii) *Union of India v. Dhanak M.Ramji*²⁵
xxiv) *Commissioner of Cus., (PRV.), Amritsar v. Malwa Industries Ltd.*²⁶
xxv) *In Re: Mohd. Zia Ul Haque*²⁷
xxvi) *Directorate of Revenue Intelligence v. Pushpa Lekhumal Tolani*²⁸
xxvii) *Nidhi Kapoor v. Principal Commissioner and Additional Secretary*

9 1994 (73) E.L.T. 240 (G.O.I.)

10 1997 (91) E.L.T. 277 (A.P.)

11 2009 (240) E.L.T. 207 (Bom.)

12 2011 (263) E.L.T. 685 (Tri. – Mumbai)

13 2011 (266) E.L.T. 167 (Mad.)

14 2015 (320) E.L.T. 428 (Del.)

15 2016 (339) E.L.T. 367 (Mad.)

16 2009 (247) E.L.T. 21 (Mad.)

17 2016 (344) E.L.T. 1154 (Mad.)

18 1981 (8) E.L.T. 153 (Mad.)

19 2014 (314) E.L.T. 854 (G.O.I.)

20 (2023) 2 Centax 118 (Tri.-Mad)

21 2000 (120) E.L.T. 322 (Cal.)

22 1994 (73) E.L.T. 425 (Tribunal)

23 2007 (212) E.L.T. 202 (Tri.-Chennai)

24 2007 (213) E.L.T. 555 (Tri.-Chennai)

25 2009 (248) E.L.T. 127 (Bom.)

26 2009 (235) E.L.T. 214 (S.C.)

27 2014 (314) E.L.T. 849 (G.O.I.)

28 2017 (353) E.L.T. 129 (S.C.)



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to the Government of India and Others²⁹

xxviii) *Rayavarapu Sri Devi v. The Principal Commissioner of Customs (Adjudication-Air), Chennai I Commissionerate*³⁰

34. The respondents have cited the following decisions in support of their contentions:

i) *Union of India v. Mohammed Aijaj Ahmed*³¹

ii) *Commissioner of Customs (AIR), Chennai-I v. P.Sinnasamy*³²

iii) *Sheikh Mohd. Omer v. Collector of Customs, Calcutta and others*³³

iv) *Malabar Diamond Gallery P. Ltd. v. Addl. Dir. General, Directorate of Revenue Intelligence, Chennai*³⁴

35. Vide Circular bearing No.9/2001 dated 22.02.2001 dealing with *Baggage - Import of goods in commercial quantity as baggage - Procedure for acceptance of Oral Declaration of passengers* the Central Board of Excise and Customs (Board) takes note of the fact that goods in commercial quantities are being brought in by passengers and cleared as part of baggage by improper declaration. They further note that there has been no strict monitoring by the supervisory officers on duty as required.

36. Referring to Board's Instructions in F.No.495/6/97-CusVI, dated 06.05.1996 and reiterated in F.No.495/19/99-Cus VI dated

²⁹ W.P.(C)No.8902 of 2021 dated 21.08.2023 (Delhi High Court)

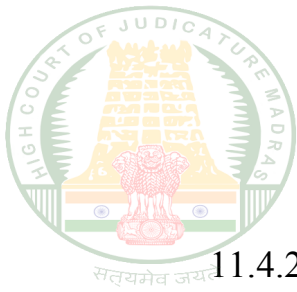
³⁰ W.P.No.6734 of 2022 dated 19.02.2024 (Madras High Court)

³¹ 2009 SCC OnLine Bom 2296

³² 2016 (344) E.L.T. 1154 (Mad.)

³³ 1983 (13) E.L.T. 1439 (S.C.)

³⁴ 2016 (341) E.L.T. 65 (Mad.)



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11.4.2000, they state that import of goods in commercial quantities would not be permissible or within the scope of the Baggage Rules even on payment of duty and such matters would have to be addressed appropriately with redemption fine and personal penalties.

37. Clause 4 of the Circular is what the appellants rely on, and reads as follows:

*“Circular : 9/2001-Cus. dated 22-Feb-2001
Baggage – Import of goods in commercial quantity as
baggage – Procedure for acceptance of Oral Declaration
of passengers*

*Circular No.9/2001-Cus., dated 22-2-2001
F.No.520/67/2000-Cus.VI*

Government of India

Ministry of Finance (Department of Revenue)

Central Board of Excise & Customs, New Delhi

*Subject : Import of goods in commercial quantity as
baggage – Procedure for acceptance of Oral Declaration
of passengers – Regarding.*

.....

*4. In addition to the above, the following steps may also
be taken:*

*(a) In respect of ‘Red Channel’ passengers the general
practice is to record the Oral Declaration (OD) on the
Disembarkation Card without first making the passenger
fill up the relevant entries. It may be ensured that every
passenger reporting at Red Channel fill up a
Disembarkation Card clearly mentioning therein the
quantity and value of goods that he has brought, and
hand over the Customs portion of the card to the officer
on duty at the Red Channel. In case the same is
incomplete/not filled up, the proper Customs Officer
should help record the O.D., of the passenger on the*



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Disembarkation Card and only thereafter should countersign / stamp the same, after taking the passenger's signature.

(b) At this stage, the Baggage officer must scrutinise the passport and other relevant travel documents to identify the short visit passengers/frequent travellers. Where the case is put up for adjudication the fact of past visits and cases adjudicated etc., must be brought to the notice of the adjudicating officer.

(c) The supervisory officers must take care to ensure that the total material in excess of duty free allowance imported by the passenger is being declared/and charged to duty and is subject matter of adjudication for determining fines, penalties etc.

(d) In case of genuine tourists where the baggage is marginally in excess of the bona fide baggage, the passengers may be allowed to clear the same, as per the existing practice, on payment of appropriate Customs duty. However, in all other cases such as short visit passengers/frequent visitors where the baggage is substantially in excess of the free allowance and in commercial quantity, the same should be deemed to be non-bona fide baggage and dealt with in that manner mentioned at paragraph 3 above.

It must also be ensured that where the 'Red Channel' facility is sought the valuation of items charged to duty is done properly. There should also be very careful check to find out whether it is a first offence or a case of repeat offence warranting more imposing deterrent penalties, apart from considering prosecution, as per guidelines. In their adjudication orders, the adjudicating authorities must clearly mention wherever it is a case of repeat offence providing justification for imposition of high penalty, so that the offenders are not let off at the appellate stage on account of legal lacuna.

(e) For the passengers walking through the Green Channel, the existing practice of collecting Disembarkation Card, containing the written declaration



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of the passenger about his baggage, at the Channel may continue.

..... ”

38. As per the Circular, a passenger carrying commodities in commercial quantities, is required to approach the Red Channel and fill the Disembarkation Card mentioning the quantity and value of goods, and pay the duty thereupon. Hence, according to the appellants, had they been permitted to continue to the Airport exit, they fully intended to follow the aforesaid procedure.

39. This argument is only to be stated to be rejected. Admittedly, the passengers have been apprehended immediately on arrival. However, the Department has brought on record sufficient material to establish an illegal modus operandi. Even prior to the arrival of the aircraft carrying the 13 passengers, the authorities had located and apprehended the vehicle in regard to which prior information had been received.

40. The occupants of the vehicle had been examined and had confessed to the facts confirming the information which the authorities had earlier received. The passengers had been found carrying gold and SGD in line with the information received and as confirmed by the abettors. Thus,



the parties had, in concert, devised a devious scheme solely to evade payment of duty.

41. According to the Department, this is not the first instance when such transactions, using a near identical modus operandi, have transpired. However, even without venturing to look into the past, the fact is that there were 13 passengers who were following the identical pattern as confirmed by the occupants of the vehicle. The contents of their baggage and their statements are identical.

42. All of them deposed to having received the contents (gold and SGD) from an anonymous person in Singapore, received instructions on how they were to behave on arrival in the Airport terminal, the steps they were advised to take and the manner by which they were to handover their consignments to the persons who had been apprehended by the customs authority waiting outside the Airport. The passengers had been examined under oath and the trajectory that their statements and letter make it more than amply clear that they were only carriers for cash.

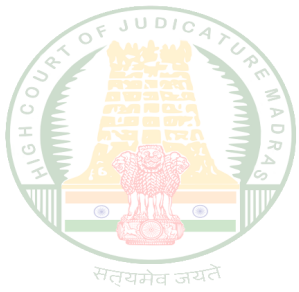
43. A sample statement is extracted below. The statement belongs to one M.Saravanan, S/o. M.Mariappan, residing at K.Vairavanpatti, Thirukostiyur, Thirupathur Taluk, Sivagangai District, Passport No.F-



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44. His statement had been originally recorded on 07.12.2007 immediately on his being apprehended by the authorities. In that statement, he has unconditionally and unilaterally acceded to the narration of events as below:

‘.....After that the authorities told me that physical examination of mine should be done either before the authorised authorities or before the Judicial Magistrate and I told them that the examination should be done by the authorised authority. During such physical examination two packets had been seized from me. While weighing the same one packet contained 236 grams of gold jewels and the 2nd packet contained 238 grams of gold jewels and that the total weight being 474 grams. Besides that 500 Singapore dollars had also been found which are Singapore dollars totalling 10 Number of 50 dollars and that the numbers being 1HN 3324407 2JP192380, 2FM471903, 2HT 217178, 2EV 965421, OLK040896, 2FD 546782, 2 LV 246977, 2KV186985, 2JL156949, the aforesaid gold jewels and the Singapore dollars had been seized under the Mahazar prepared at Chennai Air-Port Hall I hereby admit that the particulars noted in the Mahazar are true. While you questioned me about the Gold Jewels and the dollars. I hereby mentioned that now I am serving at Newmen Marain Company and duty Permit is with me and while I proceeded to India, at the Singapore Air-port a lean tall and fair person aged about 30 years and without any Moustache came to me and by introducing himself told me that he would handover 2 packets of gold jewels along with 500 Singapore Dollars which should be handed over to his Companion at Chennai. He had further told me that I should not disclose the same to the Indian Customs Authority and that his companion will Identify me outside the Air-Port and



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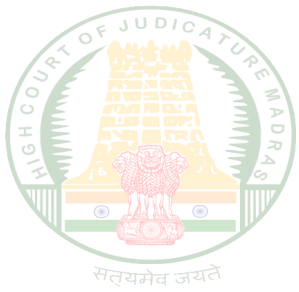


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after obtaining the gold jewels and the dollars he will handover to me the sum of Rs.2,500/-. Since the money will be got very easily and therefore on account of desire for obtaining the sum of Rs.2,500/- and therefore I had consented to take the gold jewels and the 500 Singapore Dollars. After that the aforesaid person from Singapore handed over to me two small packets by mentioning that the gold jewels are in them and also gave me 500 dollars and further noted down the particulars of my passport, the clothings along with the colour worn by me and took my photographs. Further he told me that the photographs taken at Singapore will be shown by his companion and while I am being identified I should handover to him the gold jewels Packets and the dollars after that I boarded the plane and arrived at Chennai Air-port. I further wish to say that the aforesaid gold jewels are not owned by me and that I did not bring the same for my own usage to India. Since I desired to obtain the sum of Rs.2,500/- and therefore brought the aforesaid jewels and foreign currency from Singapore.....'.

45. Thereafter, a letter was received ostensibly from M.Saravanan retracting the statement recorded from him on 07.12.2007. Summons had also been issued to M.Saravanan in terms of the relevant provisions of the Customs Act on 20.12.2007 and 25.01.2008. Saravanan had not appeared in response to the summons. He appeared finally on 17.03.2008 and his explanation for non-appearance earlier as recorded in statement dated 17.03.2008 is as follows:

.....You had questioned me as to why I had not appear for the summons issued under the customs act on 20.12.2007 and 25.1.2008 from the D.R.I. Office and for that I herey mention



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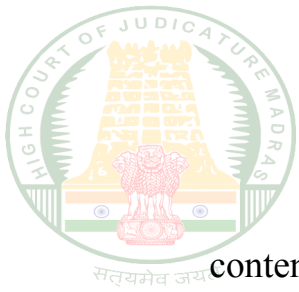
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that on 7.12.07 while Myself and 10 others belonging to our company came outside from the Air-Port, some others threatened us and further they had mentioned that they are the men of thiru.G.V.Ramesh and in this manner after threatening myself and my family and further threatened as that I should not go to your office. Hence Out of fear for those persons I did not present myself for your summons.

46. The authorities have questioned him on 17.03.2008 as to why Saravanan had chosen not to appear for the proceedings and retract his statement given on 07.12.2007 to which the relevant portion of his statement recorded on 17.03.2008 is as follows:

..... You had shown to me a letter dated 12.12.2007 which was sent to the D.R.I. Office by me and in identification of the same I hereby affix my signature with today's date. You had requested to me to read the letter and asked for the particulars. Since the letter dated 12.12.2007 and shown to me was written in English and since I am not conversant with English and therefore I do not know the particulars contained in that letter. Further you had shown to me the sworn statement said to have been filed by me in the Writ Petition before the Chennai High Court and for having seen the same. I had affix my signature along with today's date. You had questioned about the particulars contained in the Writ Petition but since the Writ Petition was in English language and therefore I could not understand the particulars contained therein in continuation of my statement. I shall answer your questions and I shall give the same in writing.

47. Thus Saravanan has confirmed unconditionally that he had no knowledge of the retraction of his statement recorded on 07.12.2007 or the



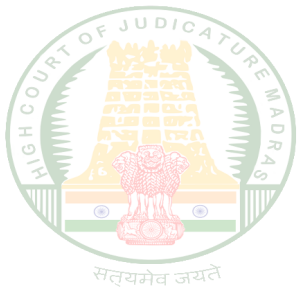
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contents of the Writ Petition that had been filed ostensibly by him as he was not conversant with English language. He had also confirmed that he had no idea of the contents of either letter dated 12.12.2007 retracting the statement dated 07.12.2007 or the Writ Petition filed later. Thereafter, in the statement recorded on 17.03.2008, the officers have questioned Saravanan in regard to the gold and the SGD that was found by him and to which he had accepted ownership under letter dated 12.12.2007.

48. In the course of the statement, he denies ownership of the gold, answering that the contents of letter dated 12.12.2007 are correct. This militates with the contents of his statement dated 07.12.2007. However, in the statement recorded on 17.03.2008, he categorically accedes to the fact that the gold and forex were not his. The question and answer in statement dated 17.03.2008 are as follows:

Question.1. In the letter dated 12.12.2007 written by you to the D.R.I. Office. You had mentioned that on 7.12.07 you had brought the Gold Jewels owned by you to the Chennai Air-Port from Singapore and that the same had been purchased at Singapore which is against the statement given by you on 7.12.2007 under Section 108 of the Customs Act 1968 and you mention about the facts known to you in this regard?

Answer: In respect of your letter written in English you had explained the particulars in Tamil. All the particulars mentioned in the letter are false. Further without knowing what had been written in that letter you had threatened and obtain



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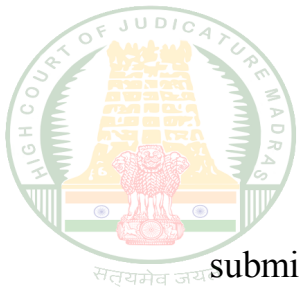
my signature. Further they told me that if I obliged them they would give me Rs.30,000/- and otherwise they had threatened me that myself and my family will not be allowed to live peacefully. Hence on account of fear for the aforesaid threat I had signed in the letter which was written in English. from me at Chennai Air-Port are not owned by me. In this connection all the particulars mentioned in the presence of your authority on 7.12.2007 are true. The Gold Jewels and 500 Singapore Dollars brought by me had been seized under the mahazar dated 7.12.2007 and in the presence of two witnesses and in support of the same I had also signed in the Mahazar. After that I was sent away to my house Myself and the co-workers who came with me left for our house on 7.12.2007.

Question:3: You think about and answer as to whether from the money earned by doing work for two years at Singapore, whether the Gold Jewels weighing about 500 grams could be purchased.

Answer:My total monthly salary being Rs.1,100 dollars which was enough for myself and for my family expenses. If the gold jewels of about 500 grams brought by me will be valued at Rs.4 lakhs approximately. In order to purchase the same about 20,000 Singapore Dollars will be required. In my salary obtained for two years I had not saved any money and that I did not have so much money. Hence I cannot purchase 500 grams of gold jewels by investing so much of money.

The aforesaid statement had been written consciously with my own hand in tamil and without any fear or threat and on my own accord. I further mention that whenever I am requisitioned I will appear before you.

49. 11 passengers had filed Writ Petitions bearing W.P.Nos.2721 to 2731 of 2008 seeking a mandamus for return of gold. The petitioners had been represented by a learned Senior Counsel. The then Additional Solicitor General of India, who appeared for the respondents had



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submitted that the matter was not as simple as it was made out to be and was large scale evasion of duty, master minded by the Proprietor of Abirami Jewellers.

50. The Writ Petitions appear to have been disposed even at the stage of admission directing the respondents to complete the investigation of the matters within a period of four (4) weeks from date of receipt of a copy of that order. The petitioners were directed to extend full cooperation in the matter.

51. A subsequent retraction has been given on 23.03.2008, a copy of which has been addressed to the Hon'ble Judge who was hearing the Writ Petitions, by name. In that letter, M.Saravanan has taken yet another turn on the see-saw, stating that it was the authorities of the Revenue Intelligence Directorate who had been coerced a statement out of him. Thus, by letter dated 23.03.2008 Saravanan has retracted statements dated 07.12.2007, 17.03.2008 and 22.03.2008 stating that the gold jewelleryes and money are owned by him and they should be returned to him.

52. The aforesaid extracts from the statements recorded support the position that the operation interrupted by the authorities was an organised one, designed to circumvent the law. The appellants have not really been



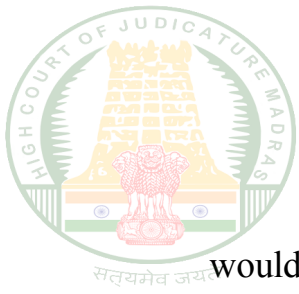
in a position to deny the same.

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53. The fact that the passengers had filed appeals before the Tribunal militates against their statements where they have acquiesced to the modus operandi followed by the Proprietor and his abettors. The passengers had all confessed in one voice at the very first instance.

54. The statements of the passengers, particularly the fact that the contents are near identical, establishes categorically that they have all been identified carefully and consciously after ascertaining their residential status in Singapore. In Notification No.31/2003 dated 01.03.2003, eligible passengers have been permitted to carry gold bars other than tola bars, bearing manufacturer's or refiner's engraved serial number and weight expressed in metric units, and gold in any other form other than gold bars and ornaments excluding studded with stones or pearls.

55. An 'eligible passenger' has been defined as a passenger of Indian origin, or one holding a valid passport, coming to India after a period of not less than 6 months of staying abroad. The very choice of passengers thus establishes the intent of the kingpin to violate the law. It is based on this Notification that the appellants would argue that there is no bar in bringing gold into the Country. To accept the aforesaid argument



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would be to close one's eyes to the obvious and blatant attempt to circumvent the law. The facts as noted in the paragraphs supra make it clear that the modus operandi followed by the appellants was to evade the incidence of duty. For these reasons, the Tribunal had accepted that the transactions can be branded as smuggling.

56. Thus, we are of the view that Circular bearing No.9/2001 dated 22.02.2001 cannot be pressed into service by the appellants. We find support for our conclusion from the order of the Delhi High Court in *Nidhi Kapoor v. Principal Commissioner and Additional Secretary to the Government of India and Others*³⁵.

57. A legal argument that has been raised is that if misdeclaration were to be equated to a prohibition on the import of goods, then the provisions of Section 125 would be rendered otiose. Section 125 presents an option to pay fine in lieu of confiscation and according to the appellants such an option must be extended to them. In the present case, the seizure of the gold and Forex was from the passengers and hence, such option, if at all, ought to have been sought only by them. Based on their statements that the gold and Forex did not belong to them, the Tribunal has rightly

³⁵ W.P.(C)No.8902 of 2021 dated 21.08.2023 (Delhi High Court)



held that the question of extending such option to them does not arise.

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58. Section 125 states that whenever confiscation of goods is authorized by this Act, the officer adjudging it, may in the case of goods, the importation or exportation of which are prohibited under the Act, give the owner, or the person from whose possession or custody, goods have been seized, an option to pay fine in lieu of confiscation.

59. The case of the appellants is that, as Section 125 operates only qua prohibited goods, it would have no bearing in the present case where the imported items, gold and forex, are not so prohibited. We do not agree. The confiscation in the present case has been made in terms of various clauses of Section 111 dealing with confiscation of improperly imported goods etc. As we have adumbrated in the narration supra, the modus operandi followed is one that reveals the categoric intention of evading duty and contravening various statutory provisions and Circulars.

60. The carefully curated circumstances in which the goods were brought into the Country would leave no doubt in one's mind that the entire exercise is a devious scheme designed to defeat the object of the law. It is in these circumstances that the Tribunal has rightly concluded that the reference to prohibition in Section 125 would equally apply to



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appropriate instances under Section 111 as well. We agree with this conclusion.

61. As regards the option, such option can be extended only to the owner, or where the owner is unknown, the person from whom possession or custody of the goods has been seized. In the present case, it is the passengers from whom the gold and Forex have been seized and they have eschewed all claim to the goods. In such circumstances, the question of extending an option to them does not arise.

62. The Tribunal, on a consideration of the intent and purport of Circular dated 22.02.2001, has held the Circular inapplicable to the facts and circumstances of these cases. The factum of non-disclosure and intention to violate and evade payment of duty had been clearly established by the fact that the passengers had consciously made a misdeclaration on the Disembarkation Card.

63. The Tribunal states '*Having signed the Disembarkation Card and the declaration, it is clear that the appellant-passengers had no intention of going to the Red Channel but to exit out of the Green Channel handing over the customs declaration at the gate. If they had any intention of going to the Red Channel and pay duty, then they would*



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have declared amount of gold jewellery brought in by them or they would have left the whole declaration blank to be filled up with the assistance of the Red Channel officers. The fact that the declarations were filled up and signed without declaring the gold coupled with the statements given on the date of seizure as well as subsequently when the retractions were retracted support the Department's case regarding the modus operandi discovered by the Department'.

64. The submission of the appellants before us do not persuade us to take a different view on the above facts. The strong pillars on which the Department rests its case are all admitted and adumbrated below in the interests of clarity:

- i) The disclosure in Disembarkation Card by all 13 passengers was false, in that they had voluntarily chosen not to disclose the gold and Forex carried by them. There can be or there is no explanation for, or wriggling out of this vital fact.
- ii) The passengers have also confirmed that the retraction of the original statement was on account of the pressure exerted by the Proprietor of Abirami Jewellers at whose instance they had carried the gold and Forex without declaration.



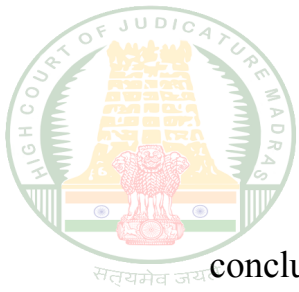
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- iii) The statements recorded by them from the passengers at the original instance is categoric to the effect that they are carriers of the gold and Forex, they were told not to disclose those consignments to the authorities and were also advised as to what the course of action must be followed if they had been apprehended when carrying the smuggled goods.
- iv) The seizure of the Toyota Qualis Car with the three occupants of that car and the statements recorded from those persons also corroborate the modus operandi carried on by the Proprietor of Abirami Jewellers for the smuggling of the gold.
- v) The selection of the passengers was made carefully to ensure that they were all persons who had stayed in Singapore for more than 6 months entitling them to carry gold and Forex into the Country.
- vi) Non-cooperation of the Proprietor, and the fact that he had no legitimate explanation for the events is apparent, as the Proprietor has not appeared for a single hearing before the authorities.

65. For the above reasons taken cumulatively, we accept the



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conclusion of the Tribunal dismissing the appeals of G.V.Ramesh, Proprietor of Abirami Jewellers, Lakshmi Narayanan, Kathiravan, Janakiraman and Parthiban, being the four occupants of the Toyoto Qualis car.

66. We also approve the findings of the Tribunal in regard the confiscation of gold and Forex under Section 111(d) 111(l) and 111(m) of the Act. As held by the Tribunal, by the very Act of non-declaration of the gold jewellery and Forex, the act of confiscation stands validated.

67. As regards appeals filed by 12 passengers, the penalties imposed have been reduced from Rs.50,000/- to Rs.10,000/-. We confirm the same.

68. On the question of redemption, the Tribunal has held that the passengers were not owners of the goods and this fact is established by their own statements where they have disavowed ownership of the gold and Forex. In such circumstances, there could be no consideration of their prayer for redemption even on payment of fine.

69. Reliance on the judgment of the Supreme Court in *Hargovind Das K.Joshi v. Collector of Customs*³⁶ takes their case no further. In that

³⁶ 1992 (61) E.L.T. 172 (S.C.)



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case, the Collector of Customs had passed an order for absolute confiscation without extending the option of redeeming the same on payment of fine.

70. The Hon'ble Supreme Court holds that the discretion as to whether an option may be extended enures in the Additional Collector of Customs who had not put to himself that question. Hence the matter was remanded to the Collector of Customs for him to apply his mind as to whether or not to extend the option to the appellants to redeem the confiscated goods, after hearing the parties.

71. In the present case, the Department has adopted the categorical stand from the inception, that the question of redemption does not arise. Hence, there has been no omission on the part of any of the authorities in considering the question of whether option was to be given to the appellants. Hence, the ratio of *Hargovind Das K.Joshi*³⁷ is inapplicable to this case.

72. The appellants have relied upon an appellate order dated 04.03.2016 as well as the revisional order passed by the Department of Revenue, Ministry of Finance dated 14.12.2017 to demonstrate that the

³⁷Foot Note Supra (36)



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authorities have taken the view in some cases that gold is not a prohibited item, granting redemption.

73. We have, in the present order, taken note of the facts and circumstances in a wholistic manner and hence, do not believe that the above order is of any assistance to the appellants.

74. These appeals are dismissed along with connected Miscellaneous Petitions with no order as to costs.

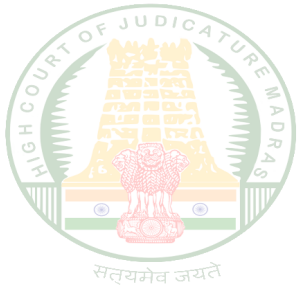
[A.S.M., J] [G.A.M., J]
10.01.2025

Index:Yes
Speaking order
Neutral Citation:Yes
sl

To

1.Customs, Excise and Service tax Appellate Tribunal,
South Zonal Bench,
Shastri Bhavan Annex, e,
1st Floor, 26, Haddows Road,
Chennai 600 006.

2.Commissioner of Customs,
AIR
ACC
Meenambakkam,
Chennai.



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Dr.ANITA SUMANTH,J.
AND
G.ARUL MURUGAN,J.

sl

C.M.A.Nos.3773, 3780, 3774, 3775,
3776, 3785, 3777, 3778, 3779, 3781, 3784,
3786, 3782, 3783, 3787 & 3788 of 2010
and M.P.Nos.1 to 1 of 2010 (16 Nos.)

10.01.2025