IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2025

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Writ Petition No.43926 of 2025
and
W.M.P.Nos.49029 & 49031 of 2025

Noorul Ayin,
W/o.Shri.Halikul Rahuman

Petitioner

Vs

1.The Commissioner of Customs (Appeals-I),
3rd Floor, New Custom House, GST Road,
Meenambakkam, Chennai-600 016.

2.The Joint Commissioner of Customs (Adjudication-Air)
Customs-Airport-Commissioner, Meenambakkam,
Chennai-600 027.

Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned Order-in-Appeal C.Cus.I No.219/2024 dated 01.04.2024 passed by the first respondent and quash the same and further direct the second respondent to release the subject goods on payment of redemption fine under Section 125 of the Customs Act, 1962 for the purpose of re-export.

For Petitioner : Mr.Hari Radhakrishnan

For Respondents : Mr.K.S.Ramaswamy

Senior Standing Counsel

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ORDER

This writ petition has been filed challenging the impugned proceedings of the first respondent dated 01.04.2024 and for a consequential direction to the second respondent to release the goods on payment of redemption fine under Section 125 of the Customs Act, 1962.

2. Heard Mr.Hari Radhakrishnan, learned counsel for petitioner and Mr.K.S.Ramaswamy, learned Senior Standing Counsel appearing for respondents.

3. It is seen from records that the petitioner had originally challenged the order passed by the first respondent dated 01.04.2024 before CESTAT. The CESTAT, by an order dated 08.04.2025, reached the following conclusion:

> "17. We now examine the remaining three cases of passenger [**Mohamed Ebrahim Amsath Hanifa, Yusaf Hussain Shahul Hameed** and **Abdul Salam**] who arrived at the Chennai domestic airport by an aircraft on a domestic run, from Mumbai domestic airport and from whose person/luggage imported goods including gold/silver coins etc. were allegedly recovered. We find that the Customs Act, 1962 is the main legislation granting powers to the Government to levy and collect duties of customs on goods imported into and exported from India. The Baggage Rules, 2016, has been framed under the Customs Act 1962. They

are a set of guiding principles, which come into play, for clearing 'baggage' both accompanied and un-accompanied – of individuals who travel to India from abroad – between their importation and the time when it exits the international airport upon clearance and loses its presumtive identity as 'baggage'. Hence once the luggage/bag which accompanies an individual arriving from a domestic airport in India, during the aircrafts domestic run, is intercepted by the officers at the Chennai domestic airport, there cannot be a presumption that it is covered under the Customs Act, 1962 and to which the Baggage Rules, 2016 can automatically apply. Imported consumer goods are freely available within the country and cannot be presumed to be goods improperly imported or to be smuggled goods if found on the person or in the luggage of individuals arriving at domestic airports, while the flight is on a domestic run. As stated by the Apex Court in **Suresh Budharmal Kalani Vs State of Maharashtra (1998 (7) SCC 337)** "A presumption can be drawn only from facts and not from other presumptions by a process of probable and logical reasoning". Hence the articles allegedly found/recovered from an individual's luggage or from his person, in the circumstances, cannot be presumed to be part of 'baggage' as defined under the Customs Act 1962. The onus of proof would be on the department, unless provided for otherwise by the statute, and an appeal against any order passed by a Commissioner (Appeals) in this regard would hence lie before the Tribunal. None of the four judgments cited by revenue pertains to individuals and their baggage being intercepted at a domestic airport and are hence not discussed in this context.

18. Having examined the defect of jurisdiction as pointed out by the Registry and by Revenue, we are of the opinion that Defect Appeal No.42151/2024 in the case of Ms.Noorul Ayin, requires to be returned to the appellant for being filed before the appropriate appellate forum. In the other three cases deal with in;
i) Defect Appeal No.40285/2025 [Mr.Mohamed Ebrahim Amsath Hanifa]
ii)Defect Appeal No.40287/2025 [Mr.Mohamed Ebrahim Amsath Hanifa]
iii) Defect Appeal No.40295/2025 [Mr.Yusaf Hussain Shahul Hameed]
If no other defect survives, the appeals may be numbered and date allotted for hearing, in the normal course."

4. After the above order was passed, the petitioner was expected to file a revision before the Central Government under Section 129DD of the Act within the time frame fixed under sub-section 2 of Section 129DD of the Act. The revision ought to have been filed within a period of 30 days and the maximum condonable period is a further period of 30 days and beyond that, the Central Government cannot condone the delay. The petitioner having missed this bus, is now trying to file a writ petition before this Court by challenging the original order dated 01.04.2024 passed in appeal.

5. The only reason assigned by learned counsel for petitioner is that the petitioner had underwent a surgery and that is the reason why the petitioner was not able to approach the concerned forum on time. Paragraph No.9 of the affidavit does not give any details and it merely states that the petitioner underwent a surgery which necessitated complete bed rest.

6. The medical report of the petitioner was placed before this Court

and the medical report shows that the petitioner underwent surgery and was admitted on 12.07.2024 and was discharged on 17.07.2024. Therefore, even as per the medical report, the surgery had been conducted in the year 2024 and thereafter, the petitioner had prosecuted the case before CESTAT. Therefore, it is too late in the day for the petitioner to raise the ground of medical condition.

7. In the considered view of this Court, the writ jurisdiction cannot be exercised in a casual manner, more particularly, in a case where the petitioner was actively contesting the case before the CESTAT and the CESTAT had given liberty to file a revision before the Central Government. The petitioner instead of filing the revision before the Central Government, waited for the entire period of six months to expire and then filed the present writ petition before this Court. This Court does not find any merit in this case and the conduct of the petitioner is not satisfactory. Therefore, this Court is not inclined to exercise its discretion under Article 226 of the Constitution of India.

In the result, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

19.11.2025

Index:yes/no
Speaking order/Non-speaking order
Neutral citation: yes/no
gm

N.ANAND VENKATESH, J.

gm

To

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