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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of Decision: 17th February, 2025***

+ **W.P.(C) 1883/2025**

KRISHNA MURTHY SHIVALINGAIAHPetitioner

Through: Ms. Amrita Sarkar, Mr. Gaurav & Ms.
Monalisa Kosaria, Advs.

versus

UNION OF INDIA & ORS.Respondents

Through: Mr. Anurag Ojha, SSC with Mr. Dipak
Raj, Mr. Shubham Kumar & Mr.
Kuleep Mishra, Advs.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE DHARMESH SHARMA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present petition has been filed by the Petitioner under Article 226 of the Constitution of India for setting aside the order dated 29th January, 2024 passed by the Assistant Commissioner of Custom, Terminal-3, IGI Airport, New Delhi to the extent that it only released part of the goods of the Petitioner. It alternatively seeks directions permitting the Petitioner to file an appeal challenging the impugned order dated 29th January, 2024.
3. The brief background of the case is that the Petitioner had arrived from Paris to Delhi on 28th November, 2023 and upon arriving various goods were detained by the Customs Department *vide Detention Receipt No. DR/INDEL4/29.11.2023/ 003182*. The details of the goods which were detained are set out below: -

“1. *Three Silver bars*



2. *One Gold Kada*
3. *One Gold chain*
4. *One Gold Bar”*

4. After the detention, the Petitioner allegedly had given a statement under Section 108 of the Customs Act (hereinafter '*The Act*') confessing that –

(i) he had brought the seized good through green channel 'intentionally' and
(ii) he is willing to waive of his right to show cause notice or personal hearing and

(iii) that he is ready to pay any penalty or requisite custom duty imposed.

The said goods were assessed and valued at Rs. 9,76,292/- on the next day i.e., 29th November, 2023. Subsequently the Petitioner had engaged a Counsel and filed a letter dated 11th December, 2023 agreeing to pay the penalty and seeking to re-export the detained goods.

5. Thereafter based on the above materials, the impugned Order-in-Original was passed on 29th January, 2024. In terms of the above order, the authority had partially released the goods but not all of the goods in the following terms: -

*“i) I deny the ‘Free Allowance’ if any admissible to the passenger, **Krishna Murthy Shivalingaiah** for the various acts of commission and omission;*

*ii) I declare the passenger, **Krishna Murthy Shivalingaiah** is “an ineligible Passenger” for the purpose of the Notification No. 50/2017-Cus dated 30.06.2017 (as amended) read with Baggage Rules, 2016 (as amended);*

iii) I order absolute confiscation of “Three silver bars engraved ‘Melter Assayer’ having purity 999 weight



3000 grams valued at Rs. 2,02,590/- and One gold bar engraved 'Metalor' having purity 999 weight 50 grams valued at Rs.2,87,749/- collectively valued at Rs. 4,90,339/-" recovered from the Pax Krishna Murthy Shivalingaiah and detained vide DR No. DR/INDEL4/29.11.2023/003182 dated 29.11.2023 under Section under Section 111(d), 111(j) & 111(m) of the Customs Act, 1962;

iv) I order confiscation of "One gold Kada having purity 916 weight 50 grams valued at Rs. 2,63,842/-, One gold chain having purity 918 weight 42 grams valued at Rs. 2,22,111/- collectively valued at Rs. 4,85,953/-" recovered from the Pax Krishna Murthy Shivalingaiah and detained vide DR No. DR/INDEL4/29.11.2023/003182 dated 29.11.2023, under Section 111(d), 111(j) & 111(m) of the Customs Act, 1962;

v) I give an option to redeem the goods confiscated at above at Sub-para iv) only, on payment of a fine of Rs. 70,000/ (Rupees Seventy Thousand Only) under Section 125 of Customs Act, 1962 and allowed the same for re-export from India only by the Pax since the passenger is a France national having France Passport No - 18AF65221. The redemption is to. be allowed after the completion of legal formalities in this regard and also fulfillment of any regulatory clearances/ approvals required. The offer of redemption, if accepted, shall be subject to condition that the Pax shall not dispute the identity and valuation of the detained goods. The offer of redemption shall cease after 'One Hundred Twenty Days' from date of the receipt of this order;

vi) I also impose a penalty of Rs.1,00,000/- (Rupees One Lac Only) on the passenger Krishna Murthy



Shivalingaiah under Section 112(a) & 112(b) of the Customs Act, 1962.”

6. Thus, the Petitioner has filed the present petition.
7. On the last hearing, *i.e.*, 14th January, 2025 the Ld. Counsel for the Petitioner submitted that this order was never served upon the Petitioner. In addition, no information was received by the Petitioner about any filing of an appeal by the department challenging the above order. It was only when the Petitioner started making enquiries for release of the goods in terms of Order-in-Original that the Petitioner was sent an incomplete copy of the appeal filed by the Department before the Commissioner (Appeals).
8. Ld. Counsel for the Petitioner also submitted that since there was no stay to the extent that the Order-in-Original allowed the release of the goods, the Petitioner may be permitted to pay the fine and seek release for the purpose of re-export. She further submitted that since the order was not served in time to the Petitioner, the Petitioner may be permitted to assail the order under Section 128 of the Customs Act.
9. The Id. Counsel for the Respondents submitted that despite several attempts being made by him, he has not received instructions as to whether any appeal has been filed or not as there is a technical glitch. The matter was then adjourned to enable him to seek instructions in this regard.
10. The matters are thus listed today. The Id. Counsel for the Department confirmed that appeals are in fact being preferred against the said Order In Original dated 29th January, 2024.
11. Heard. There are two aspects in the present case - first, implementation of the order dated 29th January, 2024 and secondly, liberty sought by the Petitioner to file an appeal challenging the said order.



12. On both counts, the Court has perused the copy of the incomplete appeal which has been served by the Department upon the Petitioner. Clearly, there has been an appeal which has been filed by the Department of which formal notice may yet even be not issued to the Petitioner. Moreover, as per the Petitioner, the appeal has also not been listed till date.

13. Considering these circumstances and the fact that the matter would have to be adjudicated comprehensively by the Commissioner (Appeals), the Petitioner is also permitted to file his appeal within a period of thirty days from now before the Commissioner (Appeals).

14. If the Petitioner intends to seek implementation of the order dated 29th January 2024, to the extent that permits the deposit of redemption fine and partial release of goods for export under specified conditions, he may seek the same from the Commissioner (Appeals).

15. The present order be communicated to the Commissioner (Appeals) by the Id. Counsel for the Union of India for necessary information and compliance.

16. Let both the Appeals be listed before the Commissioner (Appeals) on 15th April, 2025 for hearing and adjudication in accordance with law.

17. The petition is disposed of in the above terms. Pending applications, if any, are also disposed of.

PRATHIBA M. SINGH, J.

DHARMESH SHARMA, J.

FEBRUARY 17, 2025

Ch/Am