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WP No. 18757 of 2024



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25-02-2026

CORAM

THE HONOURABLE MR JUSTICE ABDUL QUDDHOSE

WP No. 18757 of 2024 AND WMP NO. 20566 OF 2024

Thangadurai

Petitioner(s)

Vs

1. The Commissioner Of Customs
Customs Airport Commissionerate,
Meenambakkam, Chennai 600 027

2. The Joint Commissioner Of Customs
(adjudication -air) Customs Airport
Commissionerate Meenambakkam,
Chennai 600 027

3. The Assistant / Deputy Commissioner
Of
Customs Customs Airport
Commissionerate, Meenambakkam
Chennai 600 027

Respondent(s)

PRAYER

Calling for the records of the 2nd respondent herein in and connected with order -in original No. 151 / 2024-25 commissionerate -I arising out of F.No. O.S. No 476 / 2024 dated 3.6.2024 quash the same and direct release of 3 gold chains of 300 grams valued at Rs 19,57,236/- and 3 gold rings weighting 18 grams valued at Rs 1,17,434/- cancelling the fine and penalty imposed under the aforesaid order.



For Petitioner(s): Mr.B.Satish Sundar

For Respondent(s): Mr. Rajnish Pathiyil, SPC

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ORDER

This writ petition has been filed, challenging the impugned order in original dated 03.06.2024 passed by the second respondent, confiscating the subject gold jewellery, morefully described in the prayer to this writ petition and also imposing penalty of Rs.3,00,000/- on the petitioner under Section 112 of the Customs Act, 1962.

2.The case of the petitioner is that he is working in Malaysia and he had brought the subject gold jewellery during one of his visits to India. According to the petitioner, since he was lacking requisite foreign currency for the payment of the Customs duty for the subject gold jewellery, the respondents had detained the gold jewellery, by issuing a detention receipt dated 28.04.2024. He would also submit that the detention receipt was issued only to enable the petitioner to pay the assessed Customs duty payable for the subject gold jewellery.

3.The petitioner claims that he had also paid the Customs duty as assessed by the respondents on 02.05.2024. However, according to the petitioner, despite paying the Customs duty, which is payable for the subject gold jewellery, as assessed by the Customs Department, the respondents did not release the subject gold jewellery to the petitioner. According to the petitioner, arbitrarily, the



impugned order in original came to be passed by the respondents, confiscating the subject gold jewellery and imposing penalty on the petitioner under Section 112 of the Customs Act.

4. In the impugned order in original, the respondents have also appropriated the duty paid by the petitioner, amounting to Rs.3,42,341/- for adjustment, subject to additional duty and penalty being imposed on the petitioner.

5. The learned counsel for the petitioner drew the attention of this Court to the detention receipt dated 28.04.2024 and would submit that as seen from the detention receipt, the subject gold jewellery was detained by the Customs Department only on account of non-payment of the Customs duty by the petitioner and not on account of non-declaration of the same by the petitioner before the Customs Department.

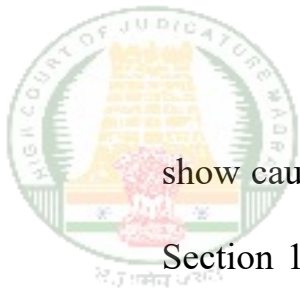
6. The learned counsel for the petitioner also drew the attention of this Court to the duty paid challan dated 02.05.2024 for a sum of Rs.3,42,341/- and would submit that as seen from the same, the petitioner had paid the assessed Customs duty for the detained gold jewellery to the Customs Department.



7.The learned counsel for the petitioner also drew the attention of this Court to the representation given by the petitioner to the respondents on 02.05.2024, requesting the second respondent to release the subject gold jewellery to the petitioner, since the petitioner has already paid the duty. According to the learned counsel for the petitioner, despite paying the Customs duty, arbitrarily, the second respondent has passed the impugned order in original dated 03.06.2024, confiscating the gold jewellery and imposing a penalty of Rs.3,00,000/- on the petitioner.

8.The learned counsel for the petitioner would also submit that the petitioner has never issued any letter to the customs department waiving the necessity of the customs department to issue show cause notice to the petitioner for confiscating the subject gold jewellery. Learned counsel for the petitioner also submits that without passing a seizure order under Section 110 of the Customs Act, the respondents had passed the confiscation order under the impugned order in original, which is arbitrary and illegal.

9.On the other hand, the learned Standing Counsel appearing for the respondents would reiterate the contents of the counter affidavit filed by the respondents before this Court and would submit that since the petitioner had waived the issuance of show cause notice though a letter dated 29.04.2024 issued to the respondents, there was no necessity for the respondents to issue



show cause notice to the petitioner as contemplated either under Section 28 and Section 124 of the Customs Act. He would also submit that the Customs duty paid by the petitioner was only for the three gold rings and not for the three gold chains.

10. According to the learned Standing Counsel appearing for the respondents, under the impugned order in original, rightly, the second respondent has rightly ordered for an absolute confiscation of the assessed three gold chains and further ordered for confiscation of the three gold rings while granting an option to the petitioner to redeem the three gold rings upon payment of a fine of Rs.10,000/- along with a penalty of Rs.3,00,000/- despite prior duty paid to the tune of Rs.3,42,341/- which was subject to the petitioner's liability to pay any additional customs duty. He would also submit that under the impugned order in original, the petitioner was granted sufficient opportunity by affording a personal hearing to which he had duly participated in the same.

11. The learned Standing Counsel appearing for the respondents would submit that if the petitioner is aggrieved by the impugned order in original, the petitioner ought to have exercised the statutory appellate remedy available under the Customs Act. He would submit that instead of filing the statutory appeal, the petitioner has filed this writ petition, which is not maintainable.



12.Learned Standing Counsel appearing for the respondents drew the attention of this Court to a judgment of the Hon'ble Supreme Court in the case of *Navayuga Engineering Company Ltd., Vs. Union of India and Another* reported in *(2024) 9 Supreme Court 710*. According to him, as seen from the aforesaid decision, once a liability of confiscation has been withdrawn after the option to pay fine is exercised and the goods are redeemed, it is natural for the goods would thereafter be subjected to duty. He would also submit that the power and the machinery provisions for the imposition and collection of duty liability exist only under Section 112 and / or Section 28 and not under Section 125 of the Customs Act.

13.The learned Standing Counsel for the respondents would also submit that the burden of proof with regard to the non-declaration of the subject gold jewellery is on the passenger, viz., the petitioner herein as per the provisions of the Customs Act. According to him, the petitioner, having not discharged the said burden, is not entitled to challenge the impugned confiscation order passed under the impugned order in original.

14.By way of reply, learned counsel for the petitioner, in support of his contention would submit that before passing the confiscation order, issuance of show cause notice is mandatory even if the importer/exporter waives the issuance of show cause notice. He relies upon a recent decision, rendered by



this Court on 20.02.2026 passed in the case of **M/s.Hiseins Exim vs. the Additional Commissioner of Customs (gr.5) in W.P. No.35884 of 2024**. He would point out that it has been made clear in the said decision that for any confiscation order to be passed the issuance of show cause notice is mandatory.

Discussion:

15.The following are the un-disputed facts:

a)No show cause notice was issued by the respondents to the petitioner prior to the passing of the impugned order in original, confiscating the petitioner's gold jewellery;

b)In the detention receipt dated 28.04.2024 issued by the Customs Department to the petitioner, the said detention receipt discloses that the petitioner will have to pay the customs duty of Rs.3,42,341/- and the detained gold jewellery was not released to the petitioner on account of the non-payment of the same by the petitioner due to non-availability of foreign currency with the petitioner;

c)The respondents have placed on record before this Court the alleged detention order dated 28.04.2024 said to have been passed as per the provisions of Section 110 of the Customs Act for detaining the subject gold jewellery. In the said detention order in the remarks column, the respondents have stated that the petitioner did not declare the gold jewellery at the time of his arrival at Chennai Airport.



16.The petitioner disputes the said detention order as seen from the arguments advanced by the learned counsel for the petitioner before this Court.

The respondents have placed on record before this Court a letter dated 29.04.2024 said to have been given by the petitioner to the respondents agreeing for waiver of issuance of show cause notice and for waiver of personal hearing. The said letter is disputed by the petitioner as seen from the arguments made by the learned counsel for the petitioner before this Court.

17.Admittedly, the petitioner has paid the duty of Rs.3,42,341/- as per the detention certificate dated 28.04.2024 issued by the respondents on 02.05.2024, within a period of four days from the date of detention i.e. 28.04.2024 of the subject goods. The respondents have also collected the aforesaid duty from the petitioner on 02.05.2024 and they have not communicated any reply to the petitioner after the collection of the said duty from the petitioner on 02.05.2024. Admittedly, the petitioner's gold jewellery had been confiscated and penalty has also been imposed on the petitioner under the impugned order in original.

18.The petitioner categorically contends before this Court that he has not committed any violation under the Customs Act. According to the petitioner, only due to the reason that he did not have sufficient foreign currency in his hand for payment of the customs duty on his arrival at the Chennai Airport, he had to pay the same after four days from the date of his arrival and on payment



of the same, the petitioner claims that he is entitled for return of the gold jewellery. The petitioner also contends that the detention order issued to him makes it clear that the gold jewellery was not detained on account of its non-declaration by the petitioner. According to the petitioner, the contention of the respondents as raised before this Court is only an after thought. The same is disputed by the respondents as seen from their counter as well as from the submissions made by the learned Standing Counsel for the respondents before this Court.

19.The law is now well settled by this Court as seen from the latest decision rendered by this Court on 20.02.2026 passed in W.P. No.35884 of 2024 in the case of **M/s.Hiseins Exim vs. the Additional Commissioner of Customs (gr.5)**, wherein it has been held that issuance of show cause notice prior to confiscation of the detained goods by the Customs Department under Section 124 of the Customs Act is mandatory, even though the party may have given a letter to the Customs Department agreeing for the waiver of a show cause notice.

20.In view of the same, necessarily, the impugned order in original has to be quashed since it is an admitted fact that no show cause notice was issued to the petitioner by the respondents prior to passing the impugned order in original confiscating the petitioner's gold jewellery. With regard to the issue whether



there was a proper seizure of the gold jewellery by the respondents or not, this Court is leaving it open for the respondents to decide once the matter is remitted back to the respondents for a fresh consideration for the following reasons:

a)The petitioner contends that the seizure order produced by the respondents before this Court is not a seizure order passed in accordance with Section 110 of the Customs Act. According to the respondents, it is a seizure order passed only in accordance with Section 110 of the Customs Act;

b)Since there are disputed questions of fact involved, which require elaborate consideration, this Court is leaving it open for the respondents to decide as to whether a proper seizure order was passed under Section 110 of the Customs Act or not. This Court is also leaving it open for the respondents to decide the issue as to whether the goods were detained by the Customs Department only on account of the non-availability of adequate foreign currency with the petitioner for the payment of customs duty or for non-declaration of the subject gold jewellery by the petitioner on his arrival at Chennai Airport.

21.Since a show cause notice was not issued to the petitioner prior to confiscation of the subject gold jewellery, which is mandatory even though the petitioner may have given a letter to the Customs Department agreeing for waiver of show cause notice, necessarily the impugned order in original has to



be quashed and the matter has to be remanded back to the very same respondent for a fresh consideration, on merits and in accordance with law.

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22. Since the mandatory show cause notice under Section 124 of the Customs Act was not issued to the petitioner prior to the passing of the confiscation order, this Court is of the considered view that the impugned order in original has been passed in violation of the principles of natural justice.

23. Since the learned counsel for the petitioner, on instructions would submit that the impugned order in original can be treated as a show cause notice issued to the petitioner, the petitioner is directed to submit a reply to the same to the respondents, within a period of two weeks from the date of receipt of a copy of this order. On receipt of the said reply within the stipulated time, the second respondent, after affording three personal hearings to the petitioner with adequate intervals and after giving due consideration to the contentions of the petitioner as well as the supporting documents filed by the petitioner, shall pass a final speaking order, on merits and in accordance with law, within a period of 12 weeks thereafter.

24. It is made clear that until the final orders are passed by the second respondent in terms of this Court's direction, the subject gold jewellery which were seized from the petitioner, shall not be disposed of by the respondents.



WP No. 18757 of 2024



25. With the above observation and direction, this writ petition is disposed of. Consequently, connected WMP is closed. No costs.

vga

25-02-2026



To

1.The Commissioner Of Customs
Customs Airport Commissionerate,
Meenambakkam, Chennai 600 027

2.The Joint Commissioner Of Customs
(adjudication -air) Customs Airport
Commissionerate Meenambakkam,
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3.The Assistant / Deputy Commissioner
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ABDUL QUDDHOSE J.

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