

(2016) 02 MAD CK 0197**MADRAS HIGH COURT****Case No:** Writ Petition No. 1142 of 2016

K.H. Mohamed Ismail (Alias)

Kose Hajamohideen Mohamed

Ismail

APPELLANT

Vs

C.C. (Airport), Chennai

RESPONDENT

Date of Decision: Feb. 3, 2016**Citation:** (2016) 338 ELT 520**Hon'ble Judges:** M. Duraiswamy, J.**Bench:** Single Bench**Advocate:** Shri N. Murali Kumaran, Advocate, for the Petitioner; Ms. Mallika Srinivas, Standing Counsel, for the Respondent**Final Decision:** Dismissed**Judgement**

@JUDGMENTTAG-ORDER

M. Duraiswamy, J.-The petitioner has filed the above writ petition to issue a writ of mandamus to direct the respondents to provisionally

release the goods, viz. 466.56 gms. gold seized by the respondent authorities vide Mahazar dated 23-12-2015 pending adjudication in O.S. No.

1366 of 2015 on the file of the respondents.

2. It is the case of the petitioner that on 23-12-2015, he brought 466.56 gms. gold, by placing them in his pant pockets along with his other

baggages and boarded the flight from Abu Dhabi and landed Chennai around 2.20 p.m. When he was proceeding towards the immigration to the

immigration desk in the International Terminal, he was intercepted by the officials of the respondents. The petitioner declared that he was

possessing gold weighing 466.56 gms. duly packed and showed them the bill for having purchased the same. According to the petitioner, he had

no intention to hide the possession of gold with him. The authorities seized the gold in the possession of the petitioner and informed that

proceedings will be initiated against him for possessing of the same. When the gold was seized under the Mahazar by the officials of the

respondent, the petitioner contended that he is entitled for provisional release of the gold under Section 110A of the Customs Act, as the said

provision for the Customs Act duly enables him to have the goods released provisionally. On 28-12-2015, the petitioner gave a representation to

the respondents, however, the respondents have not released the gold seized from the petitioner.

3. The respondents filed their counter wherein they have stated that on arrival, the petitioner was intercepted at the Exit by Superintendent (AIU)

when the petitioner attempted to walk out through the Green Channel along with one hand baggage and one checked in baggage, on a reasonable

suspicion that he might be carrying gold/contraband goods either in his baggage or on his person. Upon questioning as to whether he is carrying any

gold/contraband either in his baggage or on his person, the petitioner replied in negative and not being satisfied with the passenger's declaration

and noticing that the petitioner to be nervous, the petitioner along with his baggage consisting of one hand baggage and one checked in baggage

was brought to AIU room for a detailed examination of his baggage and search of his person. Search of the person in the presence of

Superintendent (AIU) and in the present of the witnesses resulted in the recovery of four yellow coloured metal bars kept concealed in the grey

colour pant worn by the passenger which were totally weighing 466 grams and suspected to be gold. According to the respondents, gold bars are

liable for confiscation under Section 111(d) and (l) of the Customs Act. Further, the respondents relied upon an order passed by this Court in W.P.

No. 25517 of 2015 [2016 (331) E.L.T. 337 (Mad.)] seeking for provisional release of the seized gold liable for confiscation under Section 111(d)

and 111(l) of the Customs Act, dated 24-11-2015.

4. Now it is brought to the notice of this court that adjudication has not been commenced by the respondents.

5. Learned Counsel appearing for the respondents relied upon the orders of this court made in W.P. Nos. 5663, 3656 & 3857 of 2014, dated 4-

7-2014 and 29-4-2014 respectively, wherein this court released the gold to the petitioner therein imposing some conditions.

6. Since it is brought to the notice of this court that the adjudication has not yet been commenced, I am of the considered view that the petitioner

can seek for release of the gold seized by the respondent after the completion of the adjudication. Since the respondents have not commenced the

adjudication, I direct the respondents to commence the adjudication at the earliest and complete the adjudication within a period of twelve weeks

from the date of receipt of a copy of this order. The petitioner can seek for release of the gold after the completion of the adjudication.

7. In these circumstances, I do not find any merit in the writ petition. Learned counsel for the petitioner submitted that liberty may be given to the

petitioner to file appropriate application under Section 110A of the Income Tax Act and the respondents may consider the same in accordance

with law. It is open to the petitioner, to file an application before the respondent under Section 110A of the Customs Act along with the copy of

this order and the respondents are at liberty to decide the same on merits and in accordance with law.

8. With these observations, the writ petition is dismissed. No costs.