

(2016) 02 MAD CK 0211

MADRAS HIGH COURT

Case No: Writ Petition No. 2968 of 2016 and W.M.P. No. 2453 of 2016

Palaniappan

APPELLANT

Vs

Principal Commissioner of
Customs, Chennai-I

RESPONDENT

Date of Decision: Feb. 29, 2016

Citation: (2016) 339 ELT 367

Hon'ble Judges: M. Duraiswamy, J.

Bench: Single Bench

Advocate: Shri A.K. Jayaraj, Advocate, for the Petitioner; Shri K. Mohana Murali, Standing Counsel, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

M. Duraiswamy, J.—The petitioner has filed the above writ petition to issue a Writ of Mandamus directing the second respondent herein to release and return 1 No. of Gold Bar and 3 Nos. of Gold Cut Pieces, totally weighing 446 grams, covered by O.S. No. 1183/2015-AIU.

2. According to the petitioner, he is residing in Chennai and working in Cine Field. On 23-10-2015, he boarded Flight No. IX681 Air India Express at Trichy Airport at 12.30 hrs. to return to Chennai. The petitioner arrived at Chennai Airport and he, being a Domestic Passenger, on his arrival, even before going before the table, the petitioner was taken to Air Intelligence Unit Room, situated in the Arrival Hall and according to the petitioner, the authorities started threatening him, even though the petitioner had informed before the Airport Customs Officers that he is in possession of 1 Gold Bar and 3 Nos. of Gold Cut Pieces, totally weighing 446 grams.

3. According to the petitioner, the respondents threatened the petitioner to sign the statement, typed by the officers and only after signing the statement, they had allowed the petitioner to go outside. According to the petitioner, the statement

taken from him, is not his voluntary statement and his signature was taken under threat and coercion. Thereafter, the petitioner had made request for release of gold, confirming that he is the owner of such goods, but, the respondents have not returned the gold nor given any Show Cause Notice nor orders has been passed till date. According to the petitioner, he is entitled to get release of the gold on payment of duty.

4. Further, according to the petitioner, he is a Domestic Passenger and he had boarded only at Trichy Airport and he is not a passenger like others, who are coming from other Foreign Country and arriving in India Airport and therefore, the detention of the gold from Domestic Passenger by the second respondent is illegal.

5. In the counter, filed by the respondents, they have stated that the petitioner had not declared the gold in his domestic passenger declaration card and that he attempted to smuggle the gold, by not declaring the same and by way concealing them, the passenger has neither declared nor was in possession of any valid permit and as he was not eligible to bring the gold, the same was seized, along with the material objects, used for concealing the gold. Further, the respondents have stated that in the statement, recorded before the Customs, the petitioner had stated that an unknown person had given him the gold on board the flight, to be smuggled out of Chennai Airport by concealing and not declaring to Customs and to be handed over to a receiver outside Chennai Airport, for which, he was offered Rs. 6,000/-.

6. Admittedly, the flight had arrived at Chennai from Singapore via Trichy. Further, the respondents have stated that the petitioner did not possess any valid documents for the gold and he had requested vide his letter dated 23-10-2015 that the case may be adjudicated and also for waiver of issue of show cause notice.

7. The learned counsel for the petitioner submitted that under Sec. 2(23) of the Customs Act, 1962 "import" means bringing to India from a place outside India and as per Sec. 2(3) of the Act "smuggling" means any act or omission which will render such goods liable to confiscation under Section 111 or Section 113. Under Sec. 111, the goods mentioned in the said Section brought from a place outside India shall be liable to confiscation.

8. The learned counsel appearing for the petitioner submitted that under Sec. 110A, Any goods, documents or things seized under Section 110, may, pending the order of the adjudicating authority, be released to the owner on taking a bond from him in the proper form with such security and conditions as the adjudicating authority may require. The learned counsel also submitted that when the petitioner had travelled only from Trichy to Chennai, he cannot be termed as an International Passenger and that he is only a domestic passenger. Therefore, the seizure of gold from him shall not come within the purview of the Customs Act, 1962.

9. Mr. K. Mohana Murali, learned Standing Counsel, appearing for the respondents, submitted that in the statement, recorded before the respondents, the petitioner

had admitted that an unknown person had given him the gold on board the flight, to be smuggled out of Chennai Airport, by concealing and not declaring to customs and to be handed over to a receiver, outside Chennai Airport. The learned Standing Counsel also pointed out the portion in the Mahazar statement of the petitioner.

10. On a perusal of the Mahazar, it is clear that the entire Mahazar has been typed in English, however, the petitioner had signed in Tamil. Whether the contents of the Mahazar was explained to the petitioner was not mentioned in the statement. Therefore, based on the Mahazar, it cannot be stated that the petitioner had admitted, as stated by the respondents, in their Counter. When the petitioner had signed the Mahazar in Tamil, the respondents should have explained the contents of the Mahazar to the petitioner in Tamil and also recorded the same in the Mahazar. Therefore, based on the statement, recorded by the respondents alone, it cannot be said that the petitioner had admitted that he was smuggling the gold.

11. The learned counsel for the petitioner submitted that this Court in W.P. No. 1421 of 2011, by its Order dated 28-2-2011 [2011 (266) E.L.T. 167 (Mad.)], in similar circumstances, had directed the respondents to return the gold jewellery, on payment of the applicable Customs duty and the redemption fine and to get the goods released, as per Sec. 125 of the Customs Act, 1962.

12. This Order was challenged by the Department in an Appeal in W.A. No. 582 of 2011 and the Division Bench of this Court in its judgment dated 1-4-2011, modified the order, passed in the writ petition, by directing the petitioner therein to deposit 50% of the duty for the value of the gold jewellery and on such deposit being made, the gold jewellery, in question, shall be released forthwith. Further, the Division Bench observed that the authorities shall entertain the show cause notice and decide the matter and the petitioner should cooperate in the adjudication proceedings.

13. The learned counsel for the petitioner submitted that the order passed by the Division Bench of this Court was challenged by the Customs Authorities before the Hon"ble Supreme Court and SLP was dismissed as withdrawn. Subsequently, the authorities filed a Review Application in Review Application No. 89 of 2011 in W.A. No. 582 of 2011 and the Division Bench, by its Order dated 25-4-2011, dismissed the Review Application, finding that there is no error apparent on the face of the record.

14. The ratio, laid down by the Division Bench of this Court, squarely applies to the facts and circumstance of the present case.

15. For the reasons stated above and also following the ratio, laid down by the Division Bench of this Court, I am of the considered view that the petitioner can get the return of gold, weighing 446 grams, on deposit of 50% of the duty for the value of Gold and on such deposit, being made, the second respondent can be directed to release the gold.

16. Accordingly, the petitioner is directed to deposit 50% of the duty for the value of the gold, weighing 446 grams and on such deposit being made, the gold, in question, shall be released forthwith by the second respondent.

17. It is made clear that this Order will not come in the way of the respondents to entertain show cause notice and decide the matter.

18. It is also made clear that the petitioner shall co-operate in the pending adjudication proceedings. I also direct the second respondent to complete the adjudication proceedings and pass orders, on merits and in accordance with law within a period of four weeks from the date of release of gold.

19. The learned counsel for the petitioner submitted that the petitioner would deposit 50% of the duty for the value of the gold within ten days from the date of receipt of a copy of this order. On such deposit being made, the second respondent is directed to release the gold forthwith and also the second respondent is directed to complete the adjudication within a period of four weeks from the date of release of the gold.

20. With these observations, the writ petition is allowed. No costs. Consequently, connected MP is closed.