

(2016) 06 MAD CK 0101

MADRAS HIGH COURT

Case No: Writ Petition No. 13190 of 2016 and W.M.P. No. 11559 of 2016

Jayakumar

APPELLANT

Vs

Principal Commr. of Cus.,
Chennai-I

RESPONDENT

Date of Decision: June 6, 2016

Citation: (2016) 338 ELT 673

Hon'ble Judges: T.S. Sivagnanam, J.

Bench: Single Bench

Advocate: Shri A.K. Jayaraj, Advocate, for the Petitioner; Shri K. Mohanamurali, Advocate, for the Respondent

Final Decision: Disposed Off

Judgement

@JUDGMENTTAG-ORDER

T.S. Sivagnanam, J.—Heard Mr. A.K. Jayaraj, learned counsel appearing for the petitioner, and Mr. K. Mohanamurali learned counsel for the respondents and with their consent, the writ petition itself is taken up for final hearing.

2. The petitioner has come forward with this Writ Petition for issuance of Writ of Mandamus directing the respondents to release one gold chain, weighting 119 Grams pursuant to the orders passed by the Commissioner of Customs (Appeals-I), dated 28-9-2015.

3. The petitioner filed the said appeal against an order of absolute confiscation of the gold jewel passed by the Deputy/Assistant Commissioner of Customs (Airport), Chennai, dated 9-7-2015. The Appellate Authority considered the correctness of the said order and pointed out that the petitioner has not concealed the gold jewel in any ingenious manner and there is no previous case registered against him and therefore held that the order of absolute confiscation is not warranted. With this reasoning, the Commissioner (Appeals-I) held that the petitioner is entitled to the option of redemption under Section 125 of the Customs Act, 1962. However, while

giving the option of redemption, the Commissioner (Appeals-I) passed a conditional order by virtue of which the petitioner had to pay a fine of Rs. 90,000/- and pay personal penalty of Rs. 25,000/-. But, till date, this order passed by the Commissioner (Appeals-I), dated 28-9-2015 has not been followed or altered or modified. Now, the petitioner has sought for implementation of the order and release of gold chain.

4. It is pertinent to note that the representation given by the petitioner to the first respondent is pending since December, 2015 and the petitioner was not even favoured with any reply for such representation which has necessitated the petitioner to approach this Court.

5. The Assistant Commissioner of Customs had filed a counter affidavit, in which it has been stated that the Department has not accepted the said Order-in-Appeal dated 28-9-2015 and a Revision Application has been filed before the Joint Secretary to Government, (Review Cell dated 5-4-2016). However, it has to be pointed out that as long as the order passed by the Commissioner (Appeals-I) has not been modified, the petitioner being beneficiary of the said order is entitled to get back the jewel on compliance of the conditions imposed by the Appellate Authority within reasonable time. The order was passed by the Commissioner (Appeals-I) on 28-9-2015 and in spite of lapse of several months, till date nothing worthwhile has transpired in the review application. That apart, there is no interim order staying the order passed by the Commissioner (Appeals).

6. In the light of the above, the Writ Petition is disposed of by directing the fourth respondent to return the jewel in question subject to the petitioner paying the fine and personal penalty as ordered by the Commissioner (Appeals-I) and executing a bond to produce the jewel back to the Department, in the event, the revision petition filed by the department before the revisional authority is allowed. The above direction has to be complied with within a period of three weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed. No costs.