

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 19.07.2022

CORAM

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

Writ Petition (MD) No.13651 of 2022

and

W.M.P.(MD)Nos.9705, 9706 and 9708 of 2022

R.Kannathasan

.. Petitioner

Versus

1.The Commissioner of Customs,
No.1, Williams Road, Cantonment,
Trichy – 620 001.

2.The Joint / Additional Commissioner
of Customs (Airport),
No.1, Williams Road, Cantonment,
Trichy – 620 001.

3.The Superintendent of Customs,
Air Intelligence Unit,
Office of the Assistant Commissioner of Customs,
Air Customs, Airport,
Trichy – 620 007.

.. Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for records relating to the Detention Receipt made by the third respondent herein in D.R.No. 342/2022, dated 01.05.2022, drawn at Trichy International Airport, Trichy, quash the same as illegal and direct the respondents herein to release/return the detained 3 Nos. of Gold Bangles, weighing 150 grams, covered by D.R.No. 342/2022, dated 01.05.2022, drawn at Trichy International Airport, Trichy, at



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concessional rate of duty since the petitioner being an eligible passenger on payment of duty as applicable for the passenger staying abroad for more than six months.

For Petitioner : Mr.A.K.Jayaraj

For Respondents : Mr.R.Aravindan
Senior Standing Counsel for
Central Government

ORDER

The petitioner has filed this Writ Petition seeking to quash the Detention Receipt issued by the third respondent herein in D.R.No.342/2022, dated 01.05.2022, drawn at Trichy International Airport, Trichy, and to direct the respondents herein to release/return the detained three Gold Bangles, weighing 150 grams, covered by D.R.No.342/2022, dated 01.05.2022, drawn at Trichy International Airport, Trichy, at concessional rate of duty, since the petitioner being an eligible passenger on payment of duty as applicable for the passenger staying abroad for more than six months.

2.The learned counsel for the petitioner submits that the petitioner is working in Singapore for the past 5 ½ years. He is having a valid Work Permit Card issued by the Republic of Singapore and is also having a Bank Account in Singapore and his salaries were paid by the Company through the Bank Account. The petitioner had purchased three Gold Bangles, totally weighing 150 grams in Singapore as per the invoice for the marriage in his family. After



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purchase of the above said gold bangles, the petitioner arrived in Trichy Airport on 01.05.2022 vide 6E35. Immediately, on his arrival, he had declared before the Trichy Airport Custom Officers about the possession of three gold bangles, totally weighing 150 grams. The Customs Officers without accepting the same, had taken the petitioner's passport and made him to wait for more than three hours on the same day in the Airport.

3. Thereafter, when the Officers enquired the petitioner about his arrival and also his stay in Singapore, the petitioner informed that he is coming back to India after a period of 5 ½ years and the above said gold bangles were purchased by him using his hard earned money in Singapore, vide the invoice furnished. Thereafter, the Officers had threatened the petitioner and informed him that he should sign in the undertaking letter, as if some other person had handed over the gold bangles for monetary consideration, which is not true. After the petitioner's repeated requests for release of gold bangles and return of passport, the third respondent had returned only the petitioner's passport and retained the gold bangles and informed that they are detaining the gold bangles and handed over Detention/Seizure Receipt, bearing D.R.No.342/2022, dated 01.05.2022.



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4.The contention of the Officers that the petitioner is not the real owner of the said gold bangles and he is acting as a carrier for somebody else, is not acceptable. The petitioner, on coming out from the Airport on the very next day, *i.e.*, on 02.05.2022, had sent a detailed representation to the respondents 1 and 2 and the Assistant Commissioner of Customs (Air Customs), Airport, Trichy, repudiating and retracting the earlier statement obtained from him during his detention in the Airport.

5.The learned counsel for the petitioner further submits that though the petitioner made several enquiries, the respondents have not given any proper reason and as on date, no show cause notice was received by the petitioner. Further, the petitioner in his representation dated 02.05.2022, had given the particulars about his travel and also informed that he had left India on 05.12.2016 to Singapore and returned to India again on 01.05.2022 *i.e.*, after a period of 5 ½ years. The petitioner had categorically stated that he is the real owner of the gold bangles and he purchased the same as per the invoice for the marriage in his family and he is not carrying the bangles on behalf of some other persons, for monetary consideration.

6.The learned counsel for the petitioner, after referring to Detention/Seizure of Passengers Baggage Receipt issued by the third



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respondent, submits that the petitioner had left India on 05.12.2016 to Singapore and returned to India again after a period of 5 ½ years *i.e.*, on 01.05.2022. Further, in the said receipt, it is recorded that three gold bangles, totally weighing 150 grams, are detained for further necessary action. Strangely, in the said receipt, the duration of the petitioner's stay in abroad as well his previous visit, if any, have not been recorded.

7.In support of his submission, the learned counsel for the petitioner relied upon a judgment of the Hon'ble Apex Court in **Commissioner of Customs vs. Atul Automations Pvt. Ltd. [2019 (365) ELT 465 (SC)]**, wherein the Hon'ble Apex Court held that redemption of restricted goods without authorisation upon payment of the market value are permitted and the person carrying the goods is entitled to redemption on payment of the market price at the reassessed value by the Customs authorities with fine under Section 112(a) of the Customs Act, 1962.

8.Further, the learned counsel for the petitioner relied upon a judgment of the Delhi High Court in **Vaibhav Sampat More vs. National Investigation Agency, Through its Chief Investigation Officer [Crl.A.No.115 of 2022, dated 03.06.2022]** and submitted that import of gold is not prohibited, but restricted subject to prescribed quantity on payment of duty.



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WEB COPY 9. In support of his submission, the learned counsel for the petitioner relied upon various judgments of this Court, wherein this Court consistently held that gold is not a prohibited item, but it is only a restricted item and it can be handed over to the owner or to the passenger from whom the same has been seized.

10. Further, the learned counsel for the petitioner relied on an order of this Court, **dated 28.02.2021, made in W.P.No.1421 of 2011 [T.Elavarasan vs. The Commissioner of Customs (Airport), Anna International Terminal, Chennai and others]**, wherein a direction has been sought to direct the second respondent therein to release 350 grams of assorted gold jewels viz., 7 gold chains on payment of duty as applicable for the passenger staying abroad for more than six months and passport. A learned Single Judge of this Court after considering the rival submissions and the decisions relied upon by the petitioner therein, directed the respondents therein to release the gold jewels in question, provisionally, to the petitioner therein, forthwith, on payment of customs duty and the redemption fine, as per the Notification dated 01.03.2003 and as per Section 125 of the Customs Act, 1962, subject to the adjudication proceedings to be conducted by the authorities concerned and also directed the petitioner therein to co-operate fully in the said proceedings.

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Against the said order, the Department had filed a Writ Appeal in W.A.No.582 of 2011 before the First Bench of this Court. The First Bench of this Court, after hearing the parties, vide judgment dated 01.04.2011, disposed the Writ Appeal with a slight modification to the order of the learned Single Judge that instead of depositing the entire customs duty and redemption fine, directed the petitioner therein to deposit 50% of the duty for the value of the gold jewels and on such deposit being made, the gold jewels in question shall be released forthwith. Thereafter, the Department filed Review Application No.89 of 2011 before the First Bench of this Court. The First Bench of this Court, finding that there is no error apparent on the face of the record, vide order dated 25.04.2011, dismissed the said Review Application. Aggrieved over the same, the Department filed S.L.P.(Civil)Nos.13870 and 13871 of 2011 before the Hon'ble Apex Court. Since the Hon'ble Apex Court was not inclined to entertain the S.L.Ps., the same were permitted to be withdrawn and accordingly, vide order dated 12.05.2011, the Hon'ble Apex Court dismissed the Special Leave Petitions as not pressed.

11.Further, following the above said decision of the Division Bench of this Court, this Court, in **W.P.No.2968 of 2016 [Palaniappan vs. The Principal Commissioner of Customs, Chennai and another]**, vide order dated 29.02.2016; in **W.P.(MD)Nos.2985 and 3124 of 2018 [Tajudeen vs.**

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The Commissioner of Customs, Trichy and others], vide order dated 21.02.2018; and in **W.P.No.5148 of 2018 [Barakathnisa vs. The Principal Commissioner of Customs, Chennai and others]**, vide order dated 20.04.2018, granted relief to the petitioners therein. Thus, the consistent view of the Division Bench of this Court as well as the learned Single Judges of this Court is to return the seized gold to the passenger/owner on payment of 50% of the duty. It was also further clarified that if the petitioners therein are found guilty, it is always open to the authorities to proceed further in the manner known to law.

12.The learned counsel for the petitioner further submits that once the gold is seized by the proper officers under Section 110 of the Customs Act, 1962, the petitioner is entitled to release of the gold, which are detained pending adjudication proceedings, in terms of Section 110-A of the Customs Act, 1962. As per Section 110-A of the Customs Act, 1962, any goods, documents or things seized or bank account provisionally attached, pending the order of the adjudicating authority, may be released to the owner or the bank account holder on taking a bond from him in the proper form with such security and conditions as the adjudicating authority may require. Thereafter, even in the case of option to pay fine in lieu of confiscation, Section 125 of the Customs Act, 1962 will come into play. As per Section 125 of the Customs



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Act, 1962, whenever confiscation of any goods is authorized by the Act, the Officer adjudging finds that the importation or exportation of any goods is prohibited under the Act or under any other law for the time being in force, shall, in the case of any other goods, give to the owner of the goods or where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said Officer thinks fit.

13.The learned counsel for the petitioner submits that in case of prohibited items, an option to pay in lieu of confiscation such fine would arise. In the present case, the gold bangles, which have been seized from the petitioner, is not a prohibited item. Hence, the Adjudication Officer ultimately, shall give an option to redeem the confiscated gold jewels. Further, the petitioner is ready and willing to give a bank guarantee for 50% of the duty involved.

14.The respondents filed a counter affidavit. The learned Senior Standing Counsel appearing for the respondents submits that based on the information gathered coupled with suspicious movement of passengers that an international smuggling syndicate is smuggling larger quantities of gold into India, by distributing identical gold in smaller quantities to various passengers,



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who would carry them from Singapore to Trichy in their hand baggage or in person, without declaring to the Customs Officers, in order to evade payment of customs duty, the Officers of the Directorate of Revenue Intelligence [DRI] visited the Trichy International Airport on 01.05.2022 and intercepted 26 passengers and conducted personal search of the passengers in the presence of independent witnesses and gazetted officers and with the consent of the passengers, they recovered the identical gold bangles from the passengers. Hence, the Officers suspected that they are acting as a gang and they are not the owners of the gold jewels and they are only carriers and there is a person behind them in smuggling the gold bangles in a different form. Further, none of the passengers have declared that they were carrying gold jewels before the Customs Officers, which would amount to concealment.

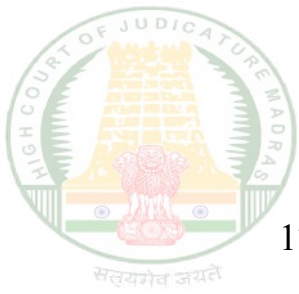
15.The learned Senior Standing Counsel further submits that the petitioner and other passengers have given statements under Section 108 of the Customs Act, 1962, which are admissible in evidence. After coming out from the Airport, on the next day, *i.e.*, on 02.05.2022, on the advice of some one, retraction statements have been given. He further submits that the retraction statements are also identical, which confirms that they are all linked by a person and on his advice, the statements have been given. Further, if the passenger had shown a bill, the Customs Officers would not have detained the



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gold items and after collecting appropriate customs duty from the petitioner, the gold bangles would have been handed over to him. Further, there is no declaration slip given by the petitioner for carrying on the gold items and there was no foreign currency available with him to pay the duty, which confirms that the petitioner and others are only carriers. The gold bangles were seized by drawing a Mahazar in the presence of two independent witnesses. The petitioner's retraction cannot be accepted. The invocation of Section 110-A of the Customs Act, 1962 is applicable only to the owners of the gold bangles and not for carriers. After following the seizure, the adjudication proceedings should be initiated against the petitioner and other passengers. The petitioner has to make all his submissions before the adjudicating authority, who shall consider the same. Further, the adjudication proceedings should be initiated to save the revenue of the Nation.

16. Further, in the counter affidavit, the names of 26 passengers and the particulars of gold, totally weighing 4035 Kgs, have been given, which is a bulk quantity. To avoid and camouflage the smuggling activities, such method has been adopted by the petitioner and other passengers. Hence, the learned Senior Standing Counsel strongly opposed this Writ Petition.



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17.The learned Senior Standing Counsel relied on a judgment of this Court in **A.Krishnamoorthy vs. Commissioner of Customs, Trichy [2022 (381) ELT 59 (Mad)]** and submitted that in a similar circumstance, this Court in the aforesaid decision directed the petitioner therein to pay 50% of customs duty in cash and furnish 50% security in the form of bank guarantee for the balance 50% of the customs duty and on production of such bank guarantee and payment of duty, the seized gold bangles are directed to be released forthwith. Hence, the same condition may be imposed, so that, the revenue of the nation would be saved.

18.Considering the rival submissions and on perusal of the materials, it is not in dispute that the petitioner is working in Singapore for the past 5 ½ years and he is having a valid Work Permit Card issued by the Republic of Singapore and is also having a Bank Account in Singapore. As could be seen from the Detention/Seizure of Passengers Baggage Receipt issued by the third respondent, the petitioner had left India on 05.12.2016 to Singapore and returned to India again after 5 ½ years *i.e.*, on 01.05.2022, which shows that for the past 5 ½ years, the petitioner was working in Singapore and he is also having a valid Work Permit Card issued by the Republic of Singapore. The petitioner came to India to attend the marriage in his family and for that purpose, he was carrying three gold bangles in his bag and not concealed the



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same in his baggage or on his body. Further, there is no declaration slip obtained from the petitioner and there is no specific rebuttal on the petitioner's assertion that no declaration slip is obtained from him. In fact, he was orally declared by the Customs Officers that he is carrying three gold bangles, totally weighing 150 grams for the marriage in his family, is not specifically denied. Further, it is not in dispute that the petitioner has returned from Singapore after 5 ½ years. A statement has been recorded from him on 01.05.2022, which has been immediately refuted on 02.05.2022, as could be seen from the records. The petitioner had consistently taken a stand that he has been working in Singapore and got work permit and is also having a Bank Account for crediting his salary. With his earnings, he had purchased three gold bangles. He had also produced the invoice of the gold bangles to the authorities. Further, there is no concealment of gold in a baggage or body, which *prima facie*, shows that there is no smuggling and at the most, it is seized for non-declaration. Added to it, adjudication proceedings is yet to be completed.

19.Be that as it may, the Hon'ble Apex Court in the case of **Commissioner of Customs vs. Atul Automations Pvt. Ltd.** [supra] distinguished the prohibited item from restricted item. It would be apposite to extract below Paragraph 9 of the said judgment:-

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"9.Unfortunately, both the Commissioner and the Tribunal did not advert to the provisions of the Foreign Trade Act. The High Court dealing with the same has aptly noticed that Section 11(8) and (9) read with Rule 17(2) of the Foreign Trade (Regulation) Rules, 1993 provides for confiscation of goods in the event of contravention of the Act, Rules or Orders but which may be released on payment of redemption charges equivalent to the market value of the goods. Section 3(3) of the Foreign Trade Act provides that any order of prohibition made under the Act shall apply mutatis mutandis as deemed to have been made under Section 11 of the Customs Act also. Section 18A of the Foreign Trade Act reads that it is in addition to and not in derogation of other laws. Section 125 of the Customs Act vests discretion in the authority to levy fine in lieu of confiscation. The MFDs were not prohibited but restricted items for import. A harmonious reading of the statutory provisions of the Foreign Trade Act and Section 125 of the Customs Act will therefore not detract from the redemption of such restricted goods imported without authorisation upon payment of the market value. There will exist a fundamental distinction between what is prohibited and what is restricted. We therefore, find no error with the conclusion of the Tribunal affirmed by the High Court that the respondent was entitled to redemption of the consignment on payment of the market price at the reassessed value by the Customs authorities with fine under Section 112(a) of the Customs Act, 1962."

20.Further, the Delhi High Court in **Vaibhav Sampat More vs. National Investigation Agency, Through its Chief Investigation Officer** [supra] held that import of gold is not prohibited, but restricted subject to prescribed quantity on payment of duty. Thus, import of gold is not prohibited, but restricted subject to prescribed quantity on payment of duty.



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21. Section 125 of the Customs Act, 1962, gives rights to the owner or from whom the goods have been seized to redeem such goods on payment of fine. Further, this Court consistently held that goods can be handed over on executing 50% of the Bank guarantee on the duty amount. In view of the same, this Court directs the petitioner to execute 50% of the Bank guarantee in lieu of customs duty and on execution of the Bank guarantee, the respondents are directed to hand over the gold bangles to the petitioner within two weeks from thereon. It is for the respondents to proceed with the adjudication proceedings to save the revenue to the Nation. The adjudication proceedings shall be completed within a period of three months from the date of receipt of a copy of this order.

22. With the above directions, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

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To

1. The Commissioner of Customs,
No.1, Williams Road, Cantonment,
Trichy – 620 001.
2. The Joint / Additional Commissioner
of Customs (Airport),
No.1, Williams Road, Cantonment,
Trichy – 620 001.

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3.The Superintendent of Customs,
Air Intelligence Unit,
Office of the Assistant Commissioner of Customs,
Air Customs, Airport,
Trichy – 620 007.

ORDER MADE IN
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