

W.P.No.27255 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2025

CORAM:

**THE HON'BLE Mr.JUSTICE ABDUL QUDDHOSE**

W.P.Nos.27255 of 2022  
and WMP.No.26450 of 2022

A.K.Ganesan

.. Petitioner

Vs.

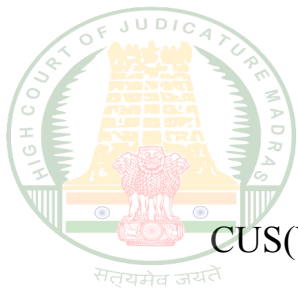
1.The Principal Commissioner and Ex Officio  
Addl. Secretary to Government of India  
Government of India, Ministry of Finance,  
Department of Revenue, 8<sup>th</sup> Floor, World Trade Centre,  
Centre – I, Cuff Parade,  
Mumbai – 400 005.

2.Commissioner of Customs (Appeals -1)  
Custom House, 60, Rajaji Salai,  
Chennai – 600 001.

3.The Additional Commissioner of Customs  
(Adjudication – Air)  
O/o.Principal Commissioner of Customs  
Commissionerate – I  
New Custom House  
Meenambakkam, Chennai – 600 027.

... Respondents

**Prayer:** This Writ petition is filed under Article 226 of the Constitution of India, praying to issue writ of certiorari calling for the records of the 1<sup>st</sup> respondent in and connected with Order No.232-233/2022-



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CUS(WS/SZ)/ASRA/Mumbai dated 27.07.2022 emanating from F.No.373/25/B/17-RA and quash the same insofar as it sustains penalty of Rs.15 lakhs on this petitioner.

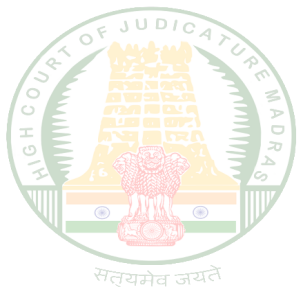
For Petitioner : Mr.G.Shanmugam

For respondents : Mr.A.P.Srinivas, SSC for R1 to R3.

### **ORDER**

This writ petition has been filed challenging the orders passed by the authorities below.

2. Originally an order in original was passed against the petitioner imposing penalty under Section 112 of the Customs Act, 1962. Aggrieved by the same, the petitioner has preferred statutory appeal. The appellate authority also confirmed the order of original authority, by confirming the penalty imposed on the petitioner under Section 112 of the Customs Act, 1962. Aggrieved by the orders passed by the original authority as well as by the appellate authority, the petitioner preferred a revision before the first respondent as per the provisions of Customs Act, 1962.



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3. The revisional authority under the impugned order has once again confirmed the order of the original authority and the appellate authority by holding that the petitioner is liable to pay penalty as per the provisions of Section 112 of the Customs Act, 1962.

4. The petitioner claims that he is innocent and no way involved in the gold seized from Ms.Vairavasundaram Jayanthi at Chennai Airport. However, according to the statement made by Ms.Vairavasundaram Jayanthi, the petitioner had employed her for the purpose of bringing gold from the Kuala Lumpur, Malaysia to Chennai. The said statement has been disputed by the petitioner. Even though the petitioner has challenged the impugned orders on merits by stating that the petitioner is innocent and no way connected with the seizure of gold from Ms.Vairavasundaram Jayanthi at the Chennai Airport premises, the learned counsel for the petitioner would now submit that on instructions that this Court need not deal with the merits of the matter and it would suffice if the matter is remanded back to the first respondent for fresh consideration for the reasons namely that the impugned order passed by the first respondent has not dealt with the grounds raised by the



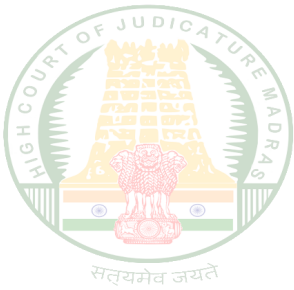
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petitioner but has only dealt with the case of Ms.Vairavasundaram

Jayanthi, who was the person from whom the gold was actually seized by the customs department.

5. The learned counsel for the petitioner also drew the attention of this Court to the impugned order passed by the first respondent and in particular, he referred to paragraph 8(a) of the same, which is reproduced hereunder :-

*“8(a). Government has gone through the facts of the case, submissions and records. At the outset, Government notes that the respondent had filed Revision Application Nos. 380/01-02/B/17-RA (Mum) against the aforesaid Order-In-Appeal wherein these two applicants were the respondents. Those revision applications were on the specific issue of the Appellate Authority having set aside the penalty imposed by the OAA on the applicants under Section 114AA of the Customs Act, 1962. On the issue of setting aside the penalty imposed on the applicants under Section 114AA of the Customs Act, 1962, Government vide its*



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*Order No. 56-57/2020-CUS (SZ)/ASRA/MUMBAI dated 20.05.2020 (DOI : 31.07.2020) through F.No. 380/01-02/8/17-RA/3702-3706 did not find it necessary to interfere with the Orders-In-Appeal and had upheld the appellate order.”*

6. As seen from the aforesaid paragraph, only based on the penalty imposed on Vairavasundaram Jayanthi under Section 114AA of the Customs Act, 1962, the first respondent upheld the order of the appellate authority as against the petitioner as well.

7. Admittedly, penalty was imposed on the petitioner only under Section 112 of the Customs Act, 1962 and not under Section 114AA of the Customs Act, 1962, under which provision Ms.Vairavasundaram Jayanthi was imposed penalty.

8. Independently, the first respondent ought to have considered the grounds raised by the petitioner for challenging the orders of the original authority as well as the appellate authority. But as seen from the impugned order of the first respondent, the first respondent has not



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independently considered the case of the petitioner who was imposed penalty under Section 112 of the Customs Act, 1962. But has given his findings only based on the case of Ms.Vairavasundaram Jayanthi who has been imposed penalty under Section 114AA of the Customs Act. Section 112 of the Customs Act, 1962 gives power to the customs department to impose penalty for improper importation of goods. Whereas, Section 114AA of the customs Act is a penalty provision which empowers the customs department to impose penalty for use of false and incorrect materials.

9. Therefore, this Court is of the considered view that one more opportunity will have to be granted to the petitioner to go before the first respondent and redress his grievance with regard to the contentions raised in this writ petition and the first respondent has to consider the case of the petitioner independently, after affording one personal hearing to the petitioner on merits and in accordance with law within a time frame to be fixed by this Court.

10. Only due to the fact that the petitioner's case has not been considered independently by the first respondent, this Court is remanding



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the matter back to the first respondent insofar as the petitioner's case alone is concerned for fresh consideration on merits and in accordance with law within a time frame to be fixed by this Court.

11. Accordingly, the impugned order passed by the first respondent against the petitioner alone is quashed and the matter is remanded back to the first respondent for fresh consideration, on merits and in accordance with law. The first respondent shall pass final orders after affording one personal hearing to the petitioner and by adhering to the principles of natural justice independently, within a period of six months from the date of receipt of a copy of this order. However, the orders of the original authority as well as the appellate authority are not the subject matter of the order of remand.

12. With the aforesaid directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

**04.07.2025**

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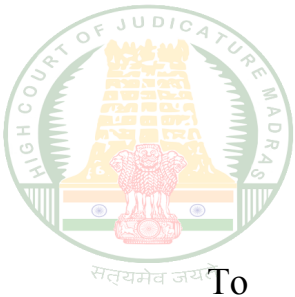
Index: Yes/No

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Neutral Citation: Yes/No



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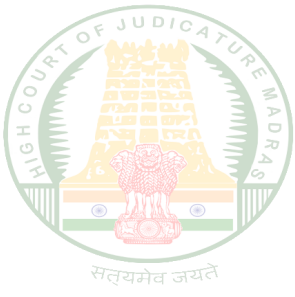
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**ABDUL QUDDHOSE, J.**

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