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W.P.No.13335 of 2021

IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED: 04.04.2025

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

W.P.No.13335 of 2021

1.Shri Ravinder Kumar Rishabchand
2.Smt. Chandrakala

.. Petitioners

Vs

1.The Principal Commissioner of Customs,
Chennai-I Commissionerate,
New Custom House,
Meenambakkam,
Chennai – 27.

2.The Joint Commissioner of Customs
(Adjudication – Air),
O/o. Chennai – I Commissionerate,
New Custom House,
Meenambakkam,
Chennai – 27.

3.Commissioner of Customs (Appeals – I),
No.60, Rajaji Salai, Custom House,
Chennai – 1.

4.The Principal Commissioner and Ex-Officio,
Addl. Secretary to Govt of India,
Ministry of Finance, Department of Revenue,
Worl Trade Centre, Mumbai – 400 005.

.. Respondents



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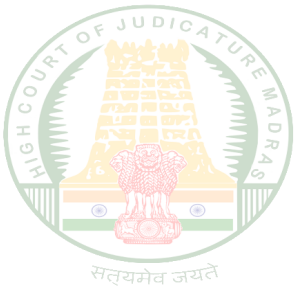
Prayer: Writ Petition is filed under Article 226 of the Constitution of India seeking for issuance of a writ of certiorarified mandamus to call for the records in and connected with the order of the fourth respondent in Order No.06-07/2021/Cus.(SZ)ASRA/Mumbai, dated 12.01.2021 in F.No.373/32-33/B/16/RA, and to quash the same for having been passed contrary to law and further direct the said respondent to pass orders afresh allowing the redemption of the seized/confiscated gold bars weighing 3052 grams and value at Rs.92,78,080/- which was the subject matter of the proceedings of the first respondent in F.No.OS/38/2014/INT-AIR to the petitioners in terms of Section 125 of the Customs Act.

For Petitioner : Mr.B.Satish Sundar

For Respondents : Mr.Umesh Rao, SSC

ORDER

The petitioner has filed this writ petition challenging the impugned orders passed by the respective authorities on the ground that the petitioners ought to have been given an option to pay fine as per the provisions of Section 125 of the Customs Act, 1962 (in short “the Act”).



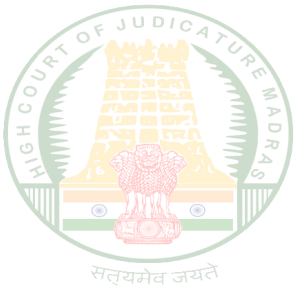
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WEB COPY 2. The learned counsel for the petitioners drew the attention of this Court to Section 125 of the Act and would submit that if the goods, which have been confiscated, are not prohibited items under the Customs Act, the respondents will have to give an option to pay fine. He also drew the attention of this Court to the impugned orders passed by the respective respondents and would submit that the option to pay fine has not been given, even though Section 125 of the Act provides for the same.

3. The learned counsel for the petitioners also drew the attention of this Court to the following authorities rendered by a learned Single of this Court:-

(a) N.Kaliyamoorthy Vs. The Commissioner of Customs, Chennai, and others [W.P.Nos.61 of 2022, etc (batch), dated 02.01.2025]; and

(b) Smt.Jhansi Rani Vs. The Principal Commissioner of Customs, Chennai, and others [W.P.No.15217 of 2021, dated 02.01.2025].



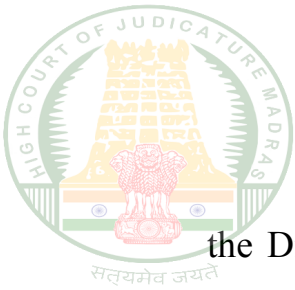
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4. Relying upon the aforesaid decisions, the learned counsel for the

petitioners would submit that since gold is not a prohibited item falling under Section 2(33) of the Act, the option to pay fine as per the provisions of Section 125 of the Act ought to have been given to the petitioners.

5. On the other hand, the learned standing counsel appearing for the respondents would submit that the law is now well settled that in case an item brought into India is a restricted item and the same was concealed by a person, who had brought the said item into India, it is a prohibited item falling under Section 2(33) of the Act.

6. In support of his contention, he drew the attention of this Court to a judgment of the Division Bench of this Court in ***Commissioner of Customs (Air) Vs. P.Sinnasamy and others [MANU/TN/2000/2016]*** and would submit that the Division Bench has considered various decisions of the Hon'ble Supreme Court and has come to the conclusion that the option to pay fine to be given by the authorities is not a mandatory one and it depends upon the facts and circumstances of each case and is only discretionary. He also drew the attention of this Court to a judgment of



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the Division Bench of this Court in ***Commissioner of Customs (AIR)***,

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Chennai-I Vs. Samynathan Murugesan [MANU/TN/109/2009],

discussed in paragraph No.60 of ***P.Sinnasamy's case (cited supra)***, and would submit that the said judgment was upheld by the Hon'ble Supreme Court reported in ***2010 (254) ELT A15(SC) [Samyanathan Murugesan Vs. Commissioner of Customs (AIR)]***. He would further submit that as seen from the decision relied upon by the Division Bench of this Court in ***P.Sinnasamy (cited supra)***, it is clear that the gold may not be one of the enumerated goods as prohibited goods, still, if the conditions for such import are not complied with, then import of gold would squarely fall under the definition “prohibited goods” as adumbrated in Section 2(33) of the Act.

7. The learned standing counsel for respondents would further submit that as seen from those decisions referred to supra, the adjudicating authorities have to consider two aspects, namely, (a) eligibility of the passengers to import the goods; and (b) whether such passengers had fulfilled the conditions of import or export, and if there is any restriction on import or export, it has to be treated as a prohibited



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item. He would submit that in the case on hand, the petitioners had

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concealed the gold bars in betel nut flakes and they did not declare the

same to the customs. Therefore, he would submit that the intention of

the petitioners was only to smuggle the gold bars into India and hence,

the ratio laid down by the Hon'ble Supreme Court as well as this Court in

P.Sinnasamy's case (cites supra) is squarely applicable to the facts of

the instant case. In the said decision, Section 125 of the Act has also

been interpreted and the Division Bench has held that the language

employed by the legislature is only “may” and that is the reason why the

discretion is left to the customs authorities depending upon the facts and

circumstances of each case to decide whether the option to pay fine can

be granted or not as per the provisions of Section 125 of the Act.

8. As seen from the Notification dated 06.03.2014 issued by the Central Board of Excise and Customs (CBEC), Department of Revenue, Ministry of Finance, Government of India, it is clear that the gold in excess of 1kg cannot be imported. However, in the case on hand, the gold bars weighing 3052 grams, which were concealed in betel nut flakes, have been seized from the petitioners, which is more than 1kg. It



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is also not in dispute that the Notification dated 06.03.2014 is still in force. Relevant portion of the Notification dated 06.03.2014 is extracted

hereunder:-

“Attention is invited to Notification No.12/2012-Cus dated 17.03.2012 (Sl No.321) regarding import of gold by 'eligible passengers' which provides that the gold in the form of bars and ornaments are allowed to be imported by 'eligible passengers' upon payment of 10% customs duty. As per the specified condition no.35 of the notification, the duty is to be paid in the foreign currency and total gold so imported should not exceed 1 kg.....”

9. Eventhough the Division Bench judgment in ***P.Sinnasamy*** (*cited supra*) was referred to in ***N.Kaliyamoorthy*** (*cited supra*) relied upon by the learned counsel for the petitioners, but, there was no discussion in respect of the said judgment. The judgment in ***P.Sinnasamy*** also makes it clear that in case of gold, discretion is vested with the authorities concerned to give an option to pay fine in lieu of confiscation under Section 125 of the Act depending upon facts and circumstances of each case. In case the gold imported is found to be



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illegal as per the Notification dated 06.03.2014 issued by CBEC, the

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respondents are permitted to exercise their discretion by not granting the

option to pay fine under Section 125 of the Act. The Hon'ble Supreme

Court in *Samyanathan Murugesan's case (cited supra)* has also

confirmed the said proposition. In the case on hand, the authorities

below have concurrently held that the petitioners are not entitled for

payment of fine in lieu of confiscation. Therefore, in view of the settled

legal position that when the gold imported is beyond the legally

permissible limit, i.e., weighing more than 1kg, the said gold has to be

treated as a prohibited item as per the provisions of Section 2(33) of the

Act. The contention of the petitioner that irrespective of the quantity of

the gold the option to pay fine in lieu of confiscation ought to have been

given will encourage smuggling, which would never have been the

intention of the legislature as the intention of the legislature to enact a

legislation like Customs Act is only to prevent smuggling and ensure fair

trading.

10. All the authorities below have rightly held that the petitioners are not entitled for payment of fine in lieu of confiscation by exercising



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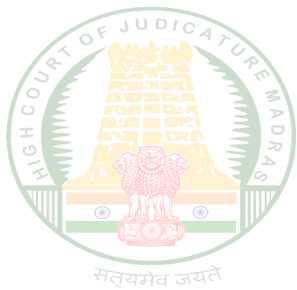
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the power conferred under Section 125 of the Act. Since the decisions relied upon by the learned counsel for the petitioners cited supra are *per-incuriam* as it has not considered the well settled legal position as held by the Division Bench of this Court in ***P.Sinnasamy (cited supra)***, this Court is not bound to follow the said decision of the learned Single Judge relied upon by the learned counsel for the petitioners. It is also to be noted that in the decisions relied upon by the learned counsel for the petitioners referred to supra, goods involved were gold jewelery imported within the permissible limit, and it was not a case of gold bars weighing more than legally permissible limit as in the instant case.

11. For the foregoing reasons, the scope of interference by this Court under Article 226 of the Constitution of India does not arise and accordingly, the writ petition is dismissed. No Costs. W.M.P.No.14166 of 2021 is closed.

04.04.2025

Index: yes/no
Neutral citation: yes/no
speaking/non-speaking
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ABDUL QUDDHOSE,J.

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