

In the High Court for the State of Telangana
Writ Petition No. 38674 of 2022

Between:

Syed Durvesh Moinuddin Shah

... Petitioner

and

The Superintendent of Customs,
Air Intelligence Unit (Batch-A)
O/o. Assistant/Deputy Commissioner of Customs
Rajiv Gandhi International Airport,
Shamshabad and others

... Respondents

Date of Judgment Pronounced: 09-12-2022

Submitted for Approval:

HON'BLE SRI JUSTICE UJJAL BHUYAN

AND

HON'BLE SRI JUSTICE C.V.BHASKAR REDDY

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|---|--------|
| 1. Whether Reporters of Local newspapers
may be allowed to see the judgment ? | Yes/No |
| 2. Whether the copies of judgment may be
marked to Law Reporters/Journals | Yes/No |
| 3. Whether Their Ladyship/Lordship wish to
see the fair copy of the Judgment ? | Yes/No |

UJJAL BHUYAN , J

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*** HON'BLE SRI JUSTICE UJJAL BHUYAN**
and
HON'BLE SRI JUSTICE C.V.BHASKAR REDDY
+ Writ Petition No. 38674 of 2022

% Dated 09.12.2022

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The Superintendent of Customs,
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Shamshabad and others

...Respondents

! Counsel for the Petitioner:

Mr. Uzair Ahmed Khan

^ Counsel for respondents No.1 & 2: Mr. B.Narsimha Sarma

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>HEAD NOTE:

? Cases cited:

THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN

AND

THE HON'BLE SRI JUSTICE C.V.BHASKAR REDDY

W.P.No. 38674 of 2022

ORDER: *(Per the Hon'ble the Chief Justice Ujjal Bhuyan)*

Heard Mr. Uzair Ahmed Khan, learned counsel for the petitioner and Mr. B.Narsimha Sarma, learned counsel for respondents No.1 and 2.

2. Challenge made in this writ petition is to the order-in-original dated 29.06.2022 passed by the Assistant Commissioner of Customs, Rajiv Gandhi International Airport, Shamshabad, Hyderabad (respondent No.2).

3. By the aforesaid order, Assistant Commissioner confiscated foreign currency equivalent to INR 6,35,250/- seized from the petitioner *vide* panchanama dated 28.01.2022 in terms of Sections 113(d), 113(e) and 113(h) of the Customs Act, 1962 (briefly 'Act of 1962' hereinafter) read with Foreign Exchange Management (Export and Import of Currency) Regulations, 2015 made under the Foreign Exchange Management Act, 1999.

4. By the aforesaid order, penalty of Rs.64,000/- was also imposed upon the petitioner in terms of Section 114(i) of the Act of 1962.

5. On a query by the Court as to why petitioner has not preferred appeal under Section 128 of the Act of 1962 against the order-in-original dated 29.06.2022, learned counsel for the petitioner submits that the impugned order is in gross violation of the principles of natural justice; no hearing was granted to the petitioner before absolute confiscation was ordered.

6. When the attention of learned counsel for the petitioner was drawn to paragraph 11 of the impugned order, which says that the passenger (petitioner) in his statement dated 28.01.2022 requested that the case may be decided on merits without issuance of show cause notice and personal hearing, he submits that at the time of seizure, statement of the petitioner was allegedly recorded; petitioner was made to sign on a computer printed sheet of paper copy of which was also not furnished to the petitioner. Thereafter, petitioner had submitted letter to the Superintendent of Customs

on 31.01.2022 requesting him to furnish him a copy of the statement allegedly recorded from the petitioner; further requesting the said authority to preserve the CCTV footage from 27.01.2022 to 29.01.2022. Thereafter, petitioner sent an e-mail on 31.05.2022 requesting the Superintendent of Customs to apprise him of the steps taken pursuant to his request made on 31.01.2022.

7. Learned counsel for the petitioner has also referred to order dated 11.05.2022 passed by the Assistant Commissioner under the Right to Information Act, 2005 wherein it was mentioned that no reply dated 31.01.2022 was received but consent for waiver of show cause notice and personal hearing was made in the statement dated 28.01.2022 by the passenger (petitioner). By the same order, it was stated that the passenger (petitioner) may request the adjudicating authority for further personal hearing before adjudication of the case.

8. On the other hand, learned counsel for respondents No.1 and 2 submits that the impugned order is an appealable order and

therefore, petitioner may file appeal before the Commissioner of Customs under Section 128 of the Act of 1962.

9. We have heard learned counsel for the parties and perused the materials on record.

10. Confiscation of goods attempted to be improperly exported *etc.*, is provided under Section 113 of the Act of 1962 and penalty for attempt to export goods improperly is provided under Section 114 of the aforesaid Act. However, Section 124 thereof deals with the issue of show cause notice before confiscation of goods *etc.* Section 124 of the Customs Act, 1962 reads as under:

124. Issue of show cause notice before confiscation of goods, *etc.*—No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person—

(a) is given a notice in [writing with the prior approval of the officer of customs not below the rank of [an Assistant Commissioner of Customs] informing] him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice

against the grounds of confiscation or imposition of penalty mentioned therein; and

(c) is given a reasonable opportunity of being heard in the matter:

Provided that the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned, be oral.

[Provided further that notwithstanding issue of notice under this section, the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed.]

11. From a perusal of the above, it is seen that no order confiscating any goods or imposing any penalty on any person shall be made unless the owner of the goods or such person is given a notice in writing with the prior approval of the higher authority informing the grounds on which it is proposed to confiscate the goods or to impose a penalty; such person is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty. Further, such a person must be given a reasonable opportunity of being heard in the matter. As

per the first proviso, notice as well as the representation may at the request of the person concerned be oral.

12. From a careful analysis of the aforesaid provision, it is clearly discernible that the owner of the goods or such person from whom the goods are seized may make a request to the competent authority that the show cause notice preceding confiscation as well as the representation to be submitted may be oral. Therefore, the show cause notice and the response thereto may be in writing or may be oral on request of the person concerned. Show cause notice and representation thereto are mandatory; those can only be oral on request of the person concerned. There is no provision for waiver of the requirement for such show cause notice or the right to submit representation. That apart, clause 'c' of Section 124 as extracted above is independent of the show cause notice as well as the right to make a representation, which mandates that before confiscation, a reasonable opportunity of hearing must be given either to the owner or to such person from whom the goods were seized. Principles of natural justice and due procedure are

therefore inbuilt in Section 124 of the Act of 1962. Since confiscation has serious consequences, the procedure prescribed under Section 124 has to be followed.

13. In the instant case, it is evident that the procedure prescribed has not been followed. That apart, copy of the document relied upon by respondent No.2 against the petitioner was also not furnished to the petitioner.

14. That being the position, we are of the view that impugned order passed by the Assistant Commissioner is in violation of Section 124 of the Act of 1962 as well as the principles of natural justice.

15. It is well settled that when there is violation of the principles of natural justice, availability of alternative remedy would be no bar to invoke jurisdiction under Article 226 of the Constitution of India.

16. We therefore set aside the order-in-original dated 29.06.2022 passed by respondent No.2 and remand the matter back to the file

of respondent No.2 *i.e.*, Assistant Commissioner of Customs to give due opportunity of hearing to the petitioner and thereafter pass appropriate order in accordance with law. This shall be done within a period of four weeks from the date of receipt of a copy of this order.

17. Till such time a decision is rendered by respondent No.2- Assistant Commissioner, the goods ordered to be confiscated shall be construed to be under seizure and would abide by such further order that may be passed by respondent No.2 on remand.

18. Writ Petition is accordingly allowed. No costs.

As a sequel, miscellaneous petitions, pending if any, stand closed.

UJJAL BHUYAN, CJ

C.V.BHASKAR REDDY, J

Date: 09.12.2022
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