

THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN

AND

THE HON'BLE SRI JUSTICE N. TUKARAMJI

+ WRIT PETITION No.46508 of 2022

% Date: 08.02.2023

Naseer Chittethukudy Majeed

... Petitioner

v.

\$ Union of India,
Through Joint Secretary,
Department of Revenue,
Ministry of Finance,
at North Block, New Delhi – 110001,
and others.

... Respondents

! Counsel for the petitioner : Mr. Srinivas Chaturvedula

^ Counsel for respondent No.1: Mr. B.Mukherjee,
Representing Mr. Gadi Praveen Kumar,
Deputy Solicitor General of India.

^ Counsel for respondents No.2 to 5: Ms. Sapna Reddy

< GIST:

➤ HEAD NOTE:

? CASES REFERRED:

1. 1992 Supp (1) SCC 443
2. 1994 Supp (3) SCC 73
3. 2020 (374) ELT 552
4. (2022) 446 ITR 734 : 2022 (4) ALD 520 (TS) (DB)

THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN

AND

THE HON'BLE SRI JUSTICE N. TUKARAMJI

WRIT PETITION No.46508 of 2022

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

Heard Mr. Srinivas Chaturvedula, learned counsel for the petitioner; Mr. B.Mukherjee, learned counsel representing Mr. Gadi Praveen Kumar, learned Deputy Solicitor General of India appearing for respondent No.1; and Ms. Sapna Reddy, learned counsel for respondents No.2 to 5.

2. By filing this petition under Article 226 of the Constitution of India, petitioner seeks quashing of order dated 15.12.2022 passed by respondent No.5 refusing to release the goods of the petitioner.

3. Before we advert to the order dated 15.12.2022, we may briefly narrate the facts relevant for adjudication of the *lis*.

4. Petitioner works for gain at Dubai. While on his visit to India on 25.01.2021 he had made a baggage declaration on 13.08.2021 in the office of respondent No.5 in respect of goods consigned to India by sea vide container No.MSCU 9553955 under Non Transfer of Residence (NTR) category declaring the value of the goods at Rs.3,65,000.00. Respondents took the view that the goods imported by the petitioner did not constitute *bona fide* baggage. In this connection, show cause notice dated 18.10.2021 was issued as to why the declaration made by the petitioner should not be rejected and the goods confiscated, besides imposition of penalty under various provisions of the Customs Act, 1962 (briefly, 'the Customs Act' hereinafter).

5. Ultimately, order-in-original dated 21.10.2021 was passed by respondent No.4 rejecting the declaration of the petitioner dated 13.08.2021 and determining the value of the goods at Rs.20,35,391.00 under Rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. That apart, certain more amounts were levied

on the petitioner besides ordering for confiscation of the goods. However, respondent No.4 gave an option for redemption of the goods on payment of redemption fine under Section 125(1) of the Customs Act within a period of 30 days. Relevant portion of the order-in-original dated 21.10.2021 reads as follows:

53. In view of the foregoing facts, circumstances, discussions and findings, I pass the following order:

ORDER

(i) I order that the goods imported by Shri Naseer Chittethukudy Majeed vide Container No.MSCU 9553955 and under Baggage Declaration No.318350 dated 13.08.2021, as non-bonafide baggage under the provisions of Customs Act, 1962 read with Baggage Rules, 2016; and I reject the value of Rs. 3,65,000/- declared in the subject Baggage Declaration for the consignment and I re-determine the value at Rs.20,35,391/- as per Rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007:

(ii) I order classification of the "new and unused goods" mentioned in the Annexure-VI to the notice and valued at Rs.11,52,050/- and "old and used goods" valued at Rs.2,13,076/- as detailed in Annexure-VII to the notice, as "dutiable goods imported for personal use"

under Chapter sub heading No.9804 90 00 of the Customs Tariff Act, 1975;

(iii) I order confiscation of the "new and unused goods" figuring in Annexure-VI to the notice valued at Rs.11,52,050/-, under Section 111(d), 111(l), 111(m) and 111(o) of the Customs Act, 1962 read with Foreign Trade Policy 2015-20, Foreign Trade (Development & Regulation) Act, 1992 and Baggage Rules, 2016, being non-bonafide baggage: However, I give an option for redemption of the goods on payment of redemption fine amounting to Rs.2,30,000/- under Section 125(1) of the Customs Act, 1962, within a period of 30 days from the date of this order; The confiscated goods which have been given an option for redemption on payment of redemption fine are to be released on payment of Redemption Fine and on payment of customs duties, as applicable, and penalty as imposed;

(iv) I order for confiscation of the Old and Used goods figuring in Annexure-VII to the notice valued at Rs.2,13,076/-, under Section 111(d), 111(l), 111(m) and 111(o) of the Customs Act, 1962 read with Foreign Trade Policy 2015-20, Foreign Trade (Development & Regulation) Act, 1992 and Baggage Rules, 2016, as non-bonafide baggage. However, I give an option for redemption of the goods on payment of redemption fine amounting to Rs.21,000/- under Section 125(1) of the Customs Act, 1962, within a period of 30 days from the date of this order; the confiscated goods which have been given an option for redemption on payment of

redemption fine are to be released on payment of Redemption Fine and on payment of customs duties as applicable and penalty as imposed;

(v) I order for confiscation of the goods mentioned in Annexure-II to Annexure V to the notice valued at Rs.6,70,265/-, under Section 111(d), 111(l), 111(m) and 111(o) of the Customs Act, 1962, read with Foreign Trade Policy 2015-20, Foreign Trade (Development & Relation Act, 1992, Baggage Rules, 2016, Import Sanitary Permit issued by the Department of Animal Husbandry and Dairying, Food Safety and Standards Act, 2006 as amended; Drugs and Cosmetics Rules, 1945 read with Drugs and Cosmetics Act, 1940 as amended, and for non-registration under Bureau of Indian Standards (BIS), wherever applicable; However, I give an option for redemption of the goods on payment of redemption fine amounting to Rs. 1,68,000/- under Section 125(1) of the Customs Act, 1962, within a period of 30 days from the date of this order; The confiscated goods which have been given an option for redemption on payment of redemption fine are to be released on payment of Redemption Fine and on payment of customs duties as applicable and penalty as imposed;

(vi) I impose a penalty of Rs. 8,14,000/- on Shri Naseer Chittethukudy Majeed, under Section 112(a) & 112(b) of the Customs Act, 1962;

(vii) **The proceedings initiated in the impugned notice against M/s.7 Zone Shipping Line India Pvt.**

Ltd., Shri Mohd. Ebrahim Abdul Rahim and Shri Salman Barees, the co-noticees, are kept in abeyance and would be taken up separately in a supplementary order.

6. According to the petitioner, he had paid the redemption fine of Rs.20,89,493.00, inclusive of basic customs duty, social welfare cess, integrated goods and services tax (IGST) and penalty vide challan No.367/2021 on 30.06.2022. After payment of the redemption fine, petitioner made a request for clearance of the container baggage vide letter dated 03.08.2022. By the communication dated 03.08.2022, respondent No.5 declined the request. Adverting to Section 125(3) of the Customs Act, it was pointed out that the option to redeem the confiscated goods had not been exercised within the maximum period of 120 days from the date of the adjudication order. Thus, the option extended to redeem the goods had become void in terms of the above provision. Therefore, request of the petitioner was rejected.

7. In the meanwhile, petitioner filed appeal under Section 128 of the Customs Act before the Commissioner of Customs and Central Tax, Appeals-I, Hyderabad, against the aforesaid decision of respondent No.5. By the order-in-appeal dated 12.09.2022, Commissioner of Appeals set aside the communication dated 03.08.2022 to the extent of rejection of claim for redemption of goods and ordered for allowing redemption of the goods on payment of applicable duties, penalty and redemption fine. A corrigendum to the order-in-appeal dated 12.09.2022 was issued by the appellate authority on 28.09.2022 whereby the operative portion of the order dated 12.09.2022 was clarified by holding that order passed by respondent No.5 was set aside to the extent of rejection of petitioner's request on the ground of delay in seeking redemption beyond the prescribed period and the goods were directed to be released as per the statute on payment of applicable duties, penalty and redemption fine.

8. Notwithstanding the above decision of the appellate authority, respondent No.5 issued the impugned order dated 15.12.2022. Petitioner has been informed that Customs Department has reviewed the order-in-appeal and thereafter has preferred an appeal against the said order. In view of the Customs Department's appeal against the order-in-appeal, request for clearance of the goods has not been considered by respondent No.3. Accordingly, permission for clearance of goods has not been accorded.

9. Aggrieved, present writ petition has been filed seeking the relief as indicated above.

10. On 30.12.2022, while directing learned Standing Counsel representing the Customs Department to obtain instruction, we had passed the following order:

Petitioner is aggrieved by communication dated 15.12.2022 issued by the 5th respondent declining to release the confiscated goods of the petitioner.

Commissioner (Appeals) had allowed the appeal filed by the petitioner against such order of confiscation and directed clearance of the goods.

However, it appears that Customs Department has preferred an appeal against the said order of the Commissioner (Appeals). Therefore, clearance of the goods has been declined.

We find that the communication dated 15.12.2022 is devoid of any specifics. Nothing has been mentioned as to when the appeal was filed and what is the present status of the appeal. Unless there is a stay of the order of the Commissioner (Appeals), it is not open to respondent Nos.3 to 5 to withhold clearance of the goods.

11. Though respondents have not filed counter affidavit, Ms. Sapna Reddy, learned counsel representing respondents No.2 to 5 submits that Customs Department has preferred a revision application before the revisional authority on 17.11.2022. The revision application is pending. There is no power on the revisional authority to grant stay. Therefore, there is no stay of the order-in-appeal. However, adverting to Section 125(3) of the Customs Act, she submits that if the redemption fine is not

paid within a period of 120 days, the option to exercise redemption would no longer be available unless an appeal is pending against the order-in-original. Therefore, order of the appellate authority is erroneous.

12. In **Union of India v. Kamalakshi Finance Corporation Ltd.**¹, Supreme Court held and reiterated that the principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not acceptable to the department, which in itself is an objectionable phrase, and is the subject matter of an appeal can be no ground for not following the appellate order unless its operation has been suspended by a competent court. If this healthy rule is not followed, the result will only be undue harassment to the assessee and chaos in administration of the tax laws.

¹ 1992 Supp (1) SCC 443

13. Supreme Court again in **Collector of Customs v. Krishna Sales (P) Ltd.**², reiterated the proposition that mere filing of an appeal does not operate as a stay or suspension of the order appealed against. It was pointed out that if the authorities were of the opinion that the goods ought not to be released pending the appeal, the straight-forward course for them is to obtain an order of stay or other appropriate direction from the Tribunal or the Supreme Court, as the case may be. Without obtaining such an order they cannot refuse to implement the order under appeal.

14. Following the above decisions of the Supreme Court, a Division Bench of the Bombay High Court in **Ganesh Benzoplast Limited v. Union of India**³ held that non-compliance of orders of the appellate authority by the subordinate original authority is disturbing to say the least as it strikes at the very root of administrative discipline and may have the effect of severely undermining the

² 1994 Supp (3) SCC 73

³ 2020 (374) ELT 552

efficacy of the appellate remedy provided to a litigant under the statute. Principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities.

15. This principle has been reiterated by the Bombay High Court in **Hingiri Buildcon & Industries Limited v. Union of India**, Writ Petition (ST) Nos. 97994 of 2020 & 97997 of 2020, decided on February 08, 2021.

16. In **Mylan Laboratories Limited v. National Faceless Assessment Centre**⁴, a Division Bench of this Court was considering challenge to a draft assessment order passed by the assessing officer under Section 144C of the Income Tax Act, 1961. In the said order, depreciation claimed by the assessee on good will was disallowed, though in the previous assessment year i.e., 2014-15 Income Tax Appellate Tribunal had allowed such claim of the assessee. Assessing officer took the stand that Income Tax Department had not accepted the said decision of the

⁴ (2022) 446 ITR 734 : 2022 (4) ALD 520 (TS) (DB)

Income Tax Appellate Tribunal as the views of the Income Tax Appellate Tribunal were not acceptable to the Income Tax Department. Accordingly, the decision of the Income Tax Appellate Tribunal was appealed before the High Court. Therefore, the issue of depreciation claimed on goodwill had not attained finality. Deprecating the stand taken by the assessing officer, this Court held as follows:

34. We are afraid such a view taken by the Assessing Officer can be justified. Rather, it is highly objectionable for an Assessing Officer to say that decision of the Income Tax Appellate Tribunal is not acceptable; and that since it has been appealed against, the issue of allowability of depreciation on goodwill has not attained finality. Unless there is a stay, order / decision of the jurisdictional Income Tax Appellate Tribunal is binding on all income tax authorities within its jurisdiction.

17. This Court held that it is highly objectionable for an assessing officer to say that decision of the Income Tax Appellate Tribunal is not acceptable and that since it has been appealed against, the issue of allowability of depreciation on goodwill had not attained finality. It has been clarified that unless there is a stay, decision of the

jurisdictional Income Tax Appellate Tribunal is binding on all income tax authorities within its jurisdiction.

Thereafter, this Court held as follows:

39. Therefore, the stand taken by the Assessing Officer that since the decision of the Income Tax Appellate Tribunal in the case of the petitioner itself for the assessment year 2014-15 has been appealed against the issue in question has not attained finality, is not only wrong but is required to be deprecated in strong terms being highly objectionable.

18. Adverting to the facts of the present case, once the appellate authority has passed the order-in-appeal and directed release of the goods on payment of redemption fine, it is not open to respondent No.5 to decline release of such goods despite payment of redemption fine by the petitioner. Respondent No.5, being an officer lower in hierarchy than the Commissioner of Appeals, is bound to comply with the order of the higher appellate authority, unless the order of the higher appellate authority is stayed by a still higher forum. As has been observed by the Supreme Court, unless there is adherence to the principle

of judicial discipline, there would be chaos in administration of the tax laws. Such a situation cannot be permitted.

19. Therefore and having regarding to the above, we set aside the order dated 15.12.2022 passed by respondent No.5 and direct the respondents to release the goods declared by the petitioner on 13.08.2021 forthwith upon due verification of payment of redemption fine.

20. Accordingly, the writ petition is allowed.

Miscellaneous applications pending, if any, shall stand closed. However, there shall be no order as to costs.

UJJAL BHUYAN, CJ

N. TUKARAMJI, J

08.02.2023

Note: LR copy to be marked.

B/o.

vs