

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE**

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE PRANAY VERMA

ON THE 31st OF JULY, 2023

WRIT PETITION No. 10267 of 2023

BETWEEN:-

HITESH NAGWANI S/O SHRI VIJAY KUMAR NAGWANI, AGED ABOUT 36 YEARS, OCCUPATION: BUSINESS R/O 65, VASUDEV NAGAR GROUND FLOOR INDORE (MADHYA PRADESH)

.....PETITIONER

(SHRI ALOK YADAV, LEARNED COUNSEL FOR THE PETITIONER)

AND

COMMISSIONER OF CUSTOMS INDORE B ZONE 3RD FLOOR 12/27 AND 12/28 VILLAGE PIPLIAKUMAR NIPANIA INDORE (MADHYA PRADESH)

.....RESPONDENTS

(SHRI PRASANNA PRASAD, LEARNED COUNSEL FOR THE RESPONDENT)

This application coming on for admission this day, the court passed the following:

ORDER

1. Petitioner has filed this present petition being aggrieved by the action of respondent whereby they are not complying the Final Order No.50707/2022 dated 18.08.2022 passed in Custom Appeal No.50122/2022 by Customs Excise and Service Tax Appellate Tribunal (CESTAT), New Delhi.

Facts of the case in short are as under:-

2. The importer M/s Rudras Overseas (Company) imported one shipment of Nutrition Supplements vide Bill of Entry No.5795615 dated 23.11.2019 and paid the Custom duty of Rs.7,53,643/-. Before the goods could be cleared, goods were put to examination by the Directorate of Revenue Intelligence (DRI), Indore and were detained under the Panchnama dated 29.11.2019 followed by seizure memo dated 26.12.2019. Ms Rudras Overseas (Company) applied for provisional release of the seized goods. In the course of aforesaid investigation, the residential premises of the petitioner were also searched on 28.11.2019 during which Indian Currency of Rs.82,67,900/- and USD 5000/- were found and retained by the Officers of DRI (IZU), Indore vide Panchnama dated 28.11.2019. The petitioner filed an application on 07.11.2020 for provisional release of seized currency. Vide order dated 15.12.2020, the department rejected the request of the petitioner which he challenged by way of Custom Appeal No.50122/2022 before the Customs Excise and Service Tax Appellate Tribunal (CESTAT), New Delhi. Vide order dated 18.08.2022, the learned Tribunal has set aside the order dated 15.12.2020.

3. After the aforesaid order, the petitioner made representation on 23.11.2022 to the Commissioner of Customs for release of the currency of Rs.82,67,900/- and USD 5000/-. Thereafter, reminders were sent by Registered AD Post. According to the petitioner, vide letter dated 23.12.2022, the Additional Commissioner sought the approval from Principal Commissioner of Customs (Adjudication), Mumbai for release of currency amount. Vide letter dated 01.12.2022, Deputy Commissioner of Customs submitted an information to the

Commissioner that the Chief Commissioner, Bhopal Zone has accorded concurrence on 01.12.2022 for acceptance of the CESTAT final order.

4. Learned counsel for the petitioner submits that the order passed by the CESTAT has attained finality as the respondent/department has accepted the same. Hence, there is no reason for not releasing the said currency to the petitioner. In support of his contention, the learned counsel has placed reliance on the judgment passed Supreme Court in the case of *Union of India vs. Kamlakshi Finance Corporation Ltd. : 1991 (55) E.L.T. 433 (SC)*, *Topland Engines Pvt. Ltd. vs. Union of India : 2006 (199) E.L.T. 209 (Guj)* and *Mangalnath Developers vs. Union of India : 2020 (374) E.L.T. 175 (Bom.)* and prays for direction to the respondent for release of the currency.

5. After notice, the respondent Deputy/Assistant Commissioner (**Legal**) has filed an application for placing the final order dated 11.01.2023 passed by the Principal Commissioner of Customs, Mumbai and sought dismissal of the present writ petition.

6. Shri Prasanna Prasad, learned counsel appearing for the respondent submits that the facts stated by the petitioner are correct as petitioner's application for provisional release alongwith the relevant documents were forwarded on 23.12.2022 to the Principal Commissioner of Customs (Adjudication), Mumbai which is a Competent Authority to release the said currency in terms of the CESTAT Final Order dated 18.08.2022. Thereafter, the Principal Commissioner of Customs (Adjudication), Mumbai ordered for absolute confiscation of the said currency under the provisions of Section 121 of Customs Act, 1962. Since, the final adjudication has been done, therefore, the prayer of the petitioner for provisional release cannot be

considered now. The petitioner is having the alternate remedy to approach the CESTAT against the final order dated 11.01.2023.

7. Despite the aforesaid submission, the learned counsel appearing for the petitioner has vehemently argued that still the petition filed by the petitioner is maintainable and respondent is bound to release the currency in compliance of CESTAT final order dated 18.08.2022.

8. The petitioner filed an application before the Competent Authority for provisional release of seized currency which was rejected by order dated 15.12.2022. The petitioner challenged the said order before the CESTAT in which the order dated 15.12.2022 has been set aside that there cannot be a reason to deny the provisional release of the said goods and accordingly set aside the order. Before the said order could be complied with, the Principal Commissioner of Customs (Adjudication) Mumbai has passed the Final Order against the M/s Rudras Overseas (Company) and the petitioner for confiscation of the seized currency. Para 5.2 is reproduced below:-

“5.2 Further, in respect of Shri Hitesh Nagwani,

(i) I order that the cash of Rs.82,67,900/- (Eighty Two Lakhs Sixty Seven Thousand Nine Hundred Rupees Only) and \$ 5,000/- (Five Thousand Dollar) seized under Panchnama dated 28.11.2019, be confiscated under the provisions of Section 212 of the Customs Act, 1962 as sale proceeds of smuggled goods;

(ii) I impose penalty of Rs.72,18,000/- (Rupees Seventy Two Lakh Eighteen Thousand Only) under Section 112(a) of the Customs Act, 1962 on Shri Hitesh Nagwani.

(iii) I impose penalty of Rs.2,98,00,000/- (Rupees Two

Crores Ninety Eight Lakhs Only) under Section 114AA of the Customs Act, 1962 on Shri Hitesh Nagwani.

5.3 This order has been passed without prejudice to any other action that may be taken against the above-mentioned firms and person under the provision of the Customs Act, 1962 and/or any other law, for time being in force in India.”

9. Learned counsel is not disputing that the petitioner was not aware about above order passed against him, at the time of filing this petition. In all fairness, the petitioner ought to have disclosed this Final Order dated 11.01.2023 passed by the Principal Commissioner of Customs. When the currency has finally been directed to be confiscated under the provisions of 121 of the Customs Act, 1962 as a sale proceeds of smuggle goods then the prayer for provisional release cannot be considered.

10. Shri Prasanna Prasad, learned counsel for the respondent submits that M/s Rudras Overseas (Company) has already approached the CESTAT, New Delhi challenging the order passed by the Principal Commissioner of Customs (Adjudication), Mumbai. He has produced the copy of order dated 29.05.2020.

11. Learned counsel for the petitioner has strongly placed the reliance on judgment passed by the High Court of Gujrat at Ahmadabad in case of *Topland Enginers* (supra) in which the Division Bench has held that once the order of Tribunal attained finality in absence of any challenge to its order, issue of show cause notice by Department refusing to implement Tribunal's order is not legal. There is no dispute about the observation given by the Gujrat High Court but in the present case, as held above, the Tribunal

12. has set aside the order rejecting the application for provisional

release of the currency. The order of Tribunal has attained finality in respect of provisional release but before the goods/currency could be released, the final order of confiscation has been passed, therefore, the order for provisional release cannot be complied with.

12. Finally, learned counsel for the petitioner has placed reliance on the judgment passed by the Apex Court in the case of *Union of India vs. Kamlakshi Finance Corporation Ltd. 1991 (55) E.L.T. 433 (S.C.)* on the point of Principle of Judicial Discipline that the order passed by the Collector (Appeals) and Tribunal binding on all adjudicating and appellate authorities.

13. In the present case also the subordinate authorities have not denied the compliance of order passed by the Tribunal for provisional release but before the goods could be released, the final order of confiscation has been passed which is an appealable order, therefore, the order passed by the Tribunal cannot be complied with.

14. In view of the above, the writ petition is dismissed. Since, the petitioner has suppressed the fact of passing of final order of confiscation which was well within his knowledge and filed this present petition seeking provisional release of the goods, the **cost of Rs.25,000/- (Rupees Twenty Five Thousand Only)** is hereby imposed on the petitioner.

Cost be deposited with the M.P. State Legal Services Authority.

(VIVEK RUSIA)
J U D G E

(PRANAY VERMA)
J U D G E

vs