

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2007

CORAM

THE HONOURABLE MR.JUSTICE P.K.MISRA
AND
THE HONOURABLE MR.JUSTICE K.MOHAN RAM

H.C.P.NO.1012 OF 2006

Vijayalakshmi .. Petitioner

Vs.

- 1.State of Tamil Nadu
rep. By its Secretary to Govt.,
Public (SC) Department,
Fort St. George,
Chennai-9
 - 2.Union of India rep. by
the Secretary to Government,
Ministry of Finance,
Department of Revenue
(COFEPOSA Unit)
Central Economic Intelligence Bureau,
Janpath Bhawan 'B' Wing,
Janapath,
New Delhi
- ... Respondents

This habeas corpus petition has been preferred under Article 226 of the Constitution of India for the issuance of a writ of habeas corpus, calling for the records of the first respondent made in G.O.Ms.No.SR.1/655-4/2006 Public (SC) Department, dated 8.9.2006 and to quash the same and to direct the respondents to produce the body of the detenu A.Chellamy before the Court and set him at liberty, now detained in Central Prison, Chennai.

For Petitioner : Mr.B.Kumar, SC
for Mr.R.Loganathan

For Respondents: Mr.M.Babu Muthu Meeran, APP
for R1
Mr.P.Kumaresan, ACGSC for R2

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ORDER

(The order of the court was made by P.K.MISRA, J.)

Heard the learned counsel appearing for the parties.

2.The order of detention under Section 3(1)(i) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, hereinafter referred to as the Act, is in question. In the grounds of detention, a reference has been made to the fact that the detenu arrived at Anna International Airport and he had brought electronic goods and RAMs in trade quantity valued at Rs.3,93,300/- (CIF), which were detained and an offence was registered, since he had mis-declared the value and the contents of the goods. Subsequently on 18.7.2006, two numbers of baggage, belonging to the detenu, were arrived by Indian Airlines flight, bearing original tag numbers CX 060394, CX 060393, Rush Tag numbers SQ 1854480 and SQ 1854479, which were kept in a safe custody. Subsequently, summons under Section 108 of the Customs Act, 1962 was issued to the detenu. Again, on 21.7.2006, the Airlines Operation Committee handed over one brown carton box bearing tag number CX 060394 and Rush tag number SQ 1854480, which was arrived by flight on 18.7.2006. By letter, dated 22.7.2006, the detenu has informed that he was not claiming those baggage and the authority may deal with those baggage in whatever way they like. The Detaining Authority came to the conclusion, which reads as follows:

"By attempting to smuggle the electronic goods and RAMs valued at Rs.5,35,800/- (CIF) under seizure, by way of mis-declaration and concealment with an intention to evade customs duty, in violation of provisions of Sections 77 and 79 of Customs Act, 1962 you have rendered the said goods liable to confiscation under Section 111(d), 111(i), 111(l) and 111(m) of the Customs Act, 1962 read with Foreign Trade (Development & Regulation) Act, 1992. Also, by not making a true declaration to the customs authorities as required under Section 77 of the Customs Act, 1962, you have committed an offence punishable in the Court of Law under Section 132 and 135 *ibid* and have also rendered yourself liable to penal action under Section 112 *ibid*. Your acts of rendering the goods liable to confiscation under Section 111 amounts to smuggling as per Section 2(39) of the Customs Act, 1962. The market value of the seized goods is Rs.7,50,120/-."

3.The learned Senior Counsel appearing for the petitioner has challenged the detention order mainly on two grounds. It is first contended by him that in the earlier representation made by the wife of the detenu, the basis for valuation had been specifically questioned and a reply was given by the Department of Revenue, Office of the Chief Commissioner of Customs, by letter, dated 17.8.2006, stating that the value of goods has been fixed on the basis of the value adopted for similar goods in the previous offence cases detected at the Airport. This is, apparently, the basis adopted in accordance with the Rule 5 of the Customs Valuation

Rules, 1988.

4.The learned Senior Counsel has contended that even though the valuation was apparently made on the aforesaid basis, in spite of the representation made and in spite of the specific ground raised, the copy of the order which is the basis for such valuation has not been furnished. According to the learned Senior Counsel, this would amount to non furnishing of relevant materials and it is also in violation of Article 22(5) of the Constitution of India. It is submitted by him that in the absence of such particulars, which should have been given, the detenu could not make any effective representation, as the exact basis for valuation adopted by the Authorities is not known to the detenu.

5.The other contention of the learned Senior Counsel for the petitioner is based on Section 23 of the Customs Act, 1962. It has been submitted by him that by subsequent letter, the detenu had abandoned the two baggage, which came later on and therefore, by virtue of Section 23(2) of the Customs Act, he was not liable to pay duty thereon and it cannot be said that there was any attempt to commit the offence of evasion of duty.

6.The learned counsel appearing for the respondents has justified the order of detention by pointing out that on previous occasions also, there had been transactions by the detenu.

7.So far as the first question is concerned, it appears that the order of detention is based upon the valuation. The Detaining Authority has come to the conclusion that the valuation was more than Rs.5 lakhs. Since the basis for the valuation was the contemporary value adopted by the Department for similar goods, in the absence of furnishing copy of such valuation, obviously, the detenu would not be in a position to make effective representation. In other words, this would amount to non furnishing of the copies of relevant documents to the detenu, which is obviously a clear contravention of Article 22(5) of the Constitution of India. In this connection, it has to be remembered that the wife of the detenu had made a representation, wherein she had made the following assertions:

"11.1 The Government have not enquired the basis on which the valuation of the goods have been made by the Customs Department to justify the arrest and quantum of value arrive at. The magazer has merely stated that "the value adopted in the seized goods is the contemporary value adopted by the department for similar goods". In simple terms, the department is saying that similar goods have been valued by the Air Port authorities previously and such value is being adopted in this case to value the goods brought by the petitioner. If so, those previous cases/assessments need to be supplied to the petitioner for him to understand. The Government ought to have called and verified itself if such averment are proper and in accordance with the documents. This crucial exercise has not been done by the Government. Therefore, the detention order has been made mechanically."

Without considering this aspect, the representation was disposed of by stating that the valuation has been adopted properly.

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8.In our opinion, it was the duty of the Authority concerned to furnish the details of such valuation. Merely by referring to the representation, dated 23.9.2006, it has been simply rejected.

Again, this would amount to non application of mind on the part of the Authorities concerned, while dealing with the representation. It has been held in several cases that a person, who is under detention, should be provided with adequate opportunity to make representation, which would imply that copies of all relevant documents should be supplied. In the present case, non furnishing of copies, in spite of repeated request made, would, obviously, deprive the detenu an opportunity of making effective representation. Moreover, the representation itself was also rejected by a laconic order without considering seriously the aspects highlighted. The order of detention is vitiated because of the above.

9. Such of the conclusion is supported by the decision of the Division Bench of this Court reported in 2006 (2) MLJ (CRL.) 492 (PEER MOHAMMED VS. STATE OF TAMIL NADU REP. BY SECRETARY TO GOVT., PUBLIC (SC) DEPARTMENT, CHENNAI AND ANOTHER), wherein after referring to the several earlier decisions of the Supreme Court, it has been concluded that the representation made by the detenu is required to be considered with seriousness.

10. In the present case, we are convinced that the order of detention has become vulnerable because of the above said defects. In such view of the mater, it is not necessary to consider the other question raised by the learned Senior Counsel for the petitioner relating to Section 23 of the Customs Act.

11. For the aforesaid reasons, the habeas corpus petition is allowed. The impugned order of detention is set aside. The detenu is directed to be set at liberty forthwith unless he is required in connection with any other case.

Vvk

Sd/
Asst.Registrar

/true copy/

सत्यमेव जयते

Sub Asst.Registrar

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To

1.The Secretary to Govt.,
State of Tamil Nadu
Public (SC) Department,
Fort St. George,
Chennai-9

2.The Secretary to Government,
Union of India
Ministry of Finance,
Department of Revenue
(COFEPOSA Unit)
Central Economic Intelligence Bureau,
Janpath Bhawan 'B' Wing,
Janapath, New Delhi

3. The Superintendent Central Prison
Chennai

4. The Joint Secretary to Government
Public (Law and Order)
Fort Saint George, Chennai - 5

5. The Public Prosecutor, High Court, Madras

+ one cc to Mr. R. Loganathan, Advocate sr no. 5463

jsk(co)
nm(26.02.07)

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