HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
(Special Original Jurisdiction)

MONDAY, THE SIXTEENTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE SUJOY PAUL
AND
THE HONOURABLE DR. JUSTICE G.RADHA RANI

WRIT PETITION Nos. 35202 and 34836 OF 2024

W.P.No.35202 of 2024

Between:

Shaik Mohammed Sadiq, S/o. Shaik Adul Jaleel, Aged 21 years, Occ. Student, R/o.3/542-1, Raja reddy Street, Kadapa, YSR District, Andhra Pradesh.

...PETITIONER

AND

1. The Commissioner of Customs, O/o.The Principal Commissioner of Customs, GST Bhavan, L B Stadium Road, Basheerbagh, Hyderabad -500 004.
2. The Additional/Joint Commissioner of Customs, (Adjudicating Authority- For Airport cases), O/o.The Principal Commissioner of Customs, GST Bhavan, L B Stadium Road, Basheerbagh, Hyderabad -500 004.
3. The Principal Commissioner of Customs,(Appeals), O/o.The Principal Commissioner of Customs, GST Bhavan, L B Stadium Road, Basheerbagh, Hyderabad -500 004.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a Writ, order or direction more particularly one in the nature of Writ of Certiorari declaring the order dated 30-07-2024 passed in O.R.No.12/2024 Adjn. (CUS) JC, passed by the respondents as illegal, arbitrary and violation of principles of natural justice and set aside the same and consequently direct the respondents to release the seized gold.

Counsel for the Petitioner: SRI T.CHEZHIYAN REPRESENTS
SRI N. KRISHNA SUMANTH

Counsel for the Respondents: SRI DOMINIC FERNANDES, SC FOR CBIC

WRIT PETITION NO: 34836 OF 2024

Between:

Shaik Arif, , S/o. Shaik Ghouse Basha, Aged 22 years, Occ. Student, R/o.16/491-a-1, Ghouse Nagar, Kadapa, YSR District, Andhra Pradesh.

...PETITIONER

AND

1. The Commissioner of Customs, O/o.The Principal Commissioner of Customs, GST Bhavan, L B Stadium Road, Basheerbagh, Hyderabad -500 004.
2. The Additional/Joint Commissioner of Customs, (Adjudicating Authority- For Airport cases), O/o.The Principal Commissioner of Customs, GST Bhavan, L B Stadium Road, Basheerbagh, Hyderabad -500 004.
3. The Principal Commissioner of Customs,(Appeals), O/o.The Principal Commissioner of Customs, GST Bhavan, L B Stadium Road, Basheerbagh, Hyderabad -500 004.

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Counsel for the Petitioner: SRI N. KRISHNA SUMANTH

Counsel for the Respondents: DOMINIC FERNANDES
(senior standing counsel for CBIC)

The Court made the following: COMMON ORDER

THE HONOURABLE SRI JUSTICE SUJOY PAUL

AND

THE HON'BLE Dr. JUSTICE G. RADHA RANI

WRIT PETITION Nos.35202 & 34836 of 2024

COMMON ORDER *(per Hon'ble SP,J)*

Sri t. Chezhiyan, learned counsel represents Sri N. Krishna Sumanth, learned counsel for the petitioners and Sri Dominic Fernandes, learned Senior Standing Counsel for CBIC, for the respondents.

2. Regard being had to the similitude of the question involved, on the joint request of learned counsel for the parties, the matters were analogously heard on admission and decided by this common order.

3. The facts are taken from W.P.No.35202 of 2024.

4. The petitioners take exception to the impugned orders dated 30.07.2024 whereby, in exercise of power under Section 112(a) and 112(b) of the Customs Act, 1962 (for short, "the Act"), the penalties were imposed on the petitioners.

5. Learned counsel for the petitioners, at the outset, fairly submits that the impugned orders are appealable under the Act, but these petitions are maintainable for twin reasons: (i) Because the impugned orders are passed in violation of principles of natural

justice and (ii) The impugned orders are passed without authority, jurisdiction and competence.

6. To elaborate, learned counsel for the petitioners submits that in the show cause notices issued before imposition of punishment, the relevant provisions were not quoted whereby informing the petitioners that under the said provisions, the penalties can be imposed. Thus, principles of natural justice were breached. He pointed out certain other aspects relating to non supply of CCTV footage etc. So far aspect of competence is concerned, it is argued that in the impugned penalty orders, it is not mentioned as to which sub-clause of aforesaid sections were attracted. To show that these petitions are maintainable, reliance is placed on the judgment of Supreme Court in **Magadh Sugar and Energy Limited v. State of Bihar**[1].

7. Learned Senior Standing Counsel for CBIC, for the respondents, submits that the petitioners have remedy of preferring appeal.

8. This is trite that writ petition is maintainable despite availability of alternative remedy.

[1] (2022) 16 SCC 428

9. The Supreme Court in **Whirlpool Corporation v. Registrar of Trade Marks, Mumbai**[2], opined that despite availability of statutory remedy, a petition can be entertained in certain circumstances including 1) violation of principles of natural justice, 2) if order is passed by an authority having no jurisdiction, 3) constitutionality of a provision is under challenge etc. The said judgment was again considered by the Supreme Court in **U.P. State Spinning Co. Ltd. v. R.S. Pandey and Another**[3] and it was opined as under:-

> *"17. ...But normally, the High Court should not entertain writ petitions unless it is shown that there is something more in a case, something going to the root of the jurisdiction of the officer, something which would show that it would be a case of palpable injustice to the writ petitioner to force him to adopt the remedies provided by the statute...."*

10. In the instant cases, despite repeated query, learned counsel for the petitioners could not point out any lack of jurisdiction of the competent authority except saying that the relevant provisions under which relevant sub-clauses under which penalties have been imposed are not mentioned. It is not the case of the petitioners as argued that the penalties were imposed without authority and competence. The only breach highlighted is non-quoting of relevant provisions. This is trite that non-quoting or wrong quoting of provisions will not make the order illegal. If the authority is otherwise having competence, said infirmity will not

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[2] (1998) 8 SCC 1
[3] (2005) 8 SCC 264

cause any dent to the impugned orders. At the cost of repetition, it is mentioned no jurisdictional error which goes to the root of the matter is pointed out. For the breach of principles of natural justice, the petitioners can avail the statutory alternative remedy. The requirement of statutory pre-deposit cannot be a ground to short-circuit the statutory remedy.

11. Recently, the Supreme Court in its judgment dated 10.04.2024 in the case of **PHR Invent Educational Society Vs. UCO Bank and Others**[4] disapproved the order of Telangana High Court in W.P.No.5275 of 2021, dated 04.02.2022, wherein a Division Bench of this Court entertained a Writ Petition despite availability of alternative remedy. The Supreme Court opined that merely because a petition is maintainable, it is not necessary to entertain a petition. It is the discretion of the Court to entertain a petition and not a compulsion. The relevant paragraph reads as under:

> *"15. It could thus be seen that, this Court has clearly held that* ***the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person. It has been held that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions.*** *The Court clearly observed that, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc., the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. It has been held that, though the powers of the High Court under Article 226 of the*

[4] (2024) 4 S.C.R. 541

Constitution are of widest amplitude, still the Courts cannot be oblivious of the ***rules of self-imposed*** *restraint evolved by this Court. The Court further held that though the rule of exhaustion of alternative remedy is a rule* ***of discretion and not one of compulsion, still it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution."***

(Emphasis Supplied)

12. In this view of the matter, in our opinion, the impugned orders dated 30.07.2024 are appealable. Hence, the admission is declined. Liberty is reserved to the petitioners to avail the said remedy.

13. Accordingly, these Writ Petitions are **disposed of**. No costs.

Interlocutory applications, if any pending, shall also stand closed.

SD/-MOHD. ISMAIL
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Commissioner of Customs, O/o.The Principal Commissioner of Customs, GST Bhavan, L B Stadium Road, Basheerbagh, Hyderabad -500 004.
2. The Additional/Joint Commissioner of Customs, (Adjudicating Authority- For Airport cases), O/o.The Principal Commissioner of Customs, GST Bhavan, L B Stadium Road, Basheerbagh, Hyderabad -500 004.
3. The Principal Commissioner of Customs,(Appeals), O/o.The Principal Commissioner of Customs, GST Bhavan, L B Stadium Road, Basheerbagh, Hyderabad -500 004.
4. One CC to Sri N. Krishna Sumanth, Advocate [OPUC]
5. One CC to Sri Dominic Fernandes, SC for CBIC[OPUC]
6. Two CD Copies

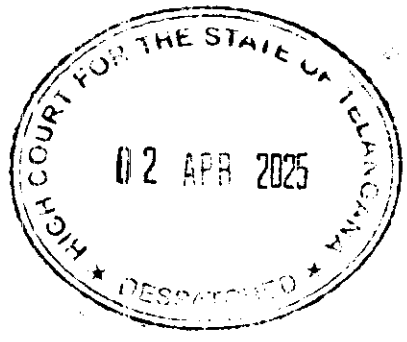
T J
BS

HIGH COURT

DATED:16/12/2024

COMMON ORDER

WRIT PETITION Nos. 35202 and 34836 OF 2024



DISPOSING OF THE WRIT PETITION

WITHOUT COSTS.

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L.P
10/3/25