BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 13.10.2015
CORAM :
THE HONOURABLE MR.JUSTICE R.SUDHAKAR
and
THE HONOURABLE MS.JUSTICE V.M.VELUMANI

Writ Appeal (MD) No.955 of 2015
and
MP(MD)No.1 of 2015

1.M/s.Seyad Cotton Mills Ltd.,
through its Executive Director
F.Seyad Rabbani

2.R.Gnanaprakash ... Appellants/Petitioners

Vs.

1.The Additional Director
Department of Revenue Intelligence
Chennai.

2.The Senior Intelligence Officer,
Directorate of Revenue Intelligence
22/14, Celin Garden
Roche Colony, South Beach Road,
Tuticorin. ... Respondents/Respondents

Prayer:- Writ Appeal filed under Clause 15 of Letters Patent against the order dated 03.09.2015 passed in WP(MD)No.14281 of 2015 by this Court.
Prayer in WP(MD). 14281/ 2015 :

Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to calling for the impugned summon issued by the 2nd respondent in File No. DRI/CZU/TTN/48/05/INT-1/2015 dated 03.08.2015 and quash the same is illegal, incompetent and arbitrary .

For Appellants : Mr.K.A.Ramakrishnan for
for M/s.C.V.Associates.
For Respondents : Mr.R.Aravindan

JUDGMENT

(Judgment of the Court was delivered by **R.SUDHAKAR,J.**)

This writ appeal is directed against the order dated 03.09.2015 passed in WP(MD)No.14281 of 2015 by this Court.

2.The appellants herein as writ petitioners have filed WP(MD) No.14281 of 2015 challenging the summons issued by the second respondent viz., the Senior Intelligence Officer, Directorate of Revenue Intelligence, Tuticorin in No.DRI/CZU/TTN/ 48/05/INT-1/2015 dated 03.08.2015.

3.The first appellant/first petitioner is a manufacturer of spinning yarn. The appellant company imported machines from abroad under valid IEC Code issued by the Ministry of Commerce. The appellant company has availed duty exemption for importing machines and subsequently goods were cleared by the Customs Authority. The company has obtained exemption from customs duty after fulfilling export obligation. As per the policy of the Ministry of Commerce, the company has to export materials to foreign countries within a period of eight years from the date of installation of the machineries. The appellant company has fulfilled the export obligation in relation to import of goods after availing exemption from paying custom duty on import. The appellant on the basis that, export obligation has been discharged, sought discharging of the duty liability bond for obtaining licence and cancelling the letter of undertaking and also the bank guarantee given by it. At this juncture, the second respondent caused an inspection of the premises of the appellant company on 23.07.2015 and seized certain documents and issued summons on the same day under Section 108 of the Customs Act, 1962 alleging that the appellant had fraudulently availed EPCG scheme. It appears that on receipt of the summons, the party did not appear. Subsequently, further summons were issued on 03.08.2015. Therefore, the writ petition came to be filed challenging the subsequent summons dated 03.08.2015 passed in No.DRI/CZU/TTN/48/05/INT-1/2015.

4.The contention of the appellant before the learned Single Judge is that Senior Intelligence Officer is not an Customs Officer, for which, he placed reliance upon the Notification No.17/2002 - cus. (N.T.) dated 07.03.2002 as amended by Notification No.82/2014-Cus. (N.T.).

5.The learned Single Judge however did not accept the said plea and rejected the same in view of Notification No.31/97 - Cus (NT), dated 07.07.1997 wherein it is stated that all Officers of the Directorate of Revenue Intelligence have been designated as Officers of Customs.

6.The learned Single Judge has also rejected the plea with regard to issuance of summons by placing reliance upon the decision reported in ***2010 (5) SCC 647 (Commissioner of Customs, Calcutta and others Vs. M.M.Exports and another)***, wherein it is stated that this Court should not interfere with the issue related to issuance of summons. Against the said finding, the appellant company has come before this Court by way of appeal.

7.For deciding the issue involved in the present Writ Appeal, it would be relevant to refer Section 108, Section 4 and Section 5 of the Customs Act, 1962 and the same reads as follows:

> *108.**Power to summon persons to give evidence and produce documents.** - [(1) Any Gazetted Officer of Customs shall have power to summon any person whose attendance he considers necessary either to given evidence or to produce a document or any other thing in any inquiry which such officer is making under this Act.]*
>
> *(2)A summons to produce documents or other things may be for the production of certain specified documents or things or for the production of all documents or things of a certain description in the possession or under the control of the person summoned.*
>
> *(3)All persons so summoned shall be bound to attend either in person or by an authorised agent, as such officer may direct; and all persons so summoned shall be bound to state the*

truth upon any subject, respecting which they are examined or make statements and produce such documents and other things as may be required:

Provided that the exemption under section 132 of the Code of Civil Procedure, 1908 (5 of 1908) shall be applicable to any requisition for attendance under this section.

(4)Every such inquiry as aforesaid shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal code (45 of 1860).

*4.**Appointment of officers of customs**.-(1) The Board may appoint such persons as it thinks fit to be officers of customs.*

(2)Without prejudice to the provisions of sub-section (1), the Board may authorise a Chief Commissioner of Customs or] a [Joint or [Deputy or Assistant Commissioner of Customs to appoint officers of customs below the rank of Assistant Commissioner of Customs.

*5.**Powers of officers of customs**.-(1)Subject to such conditions and limitations as the Board may impose, an officer of customs may exercise the powers and discharge the duties conferred or imposed on him under this Act.*

(2)An officer of customs may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of customs who is subordinate to him.

(3)Notwithstanding anything contained in this section, [a[Commissioner(Appeals)]] shall not exercise the powers and discharge the duties conferred or imposed on an officer of customs other than those specified in Chapter XV and Section 108.

8.It is also relevant to refer the Notification No.31/97 - Cus (NT) dated 07.07.1997 and the Notification No.17/2002 - Cus (N.T) dated 07.03.2002.

Notification No.31/97 - Cus (NT) dated 07.07.1997:

Appointment of Appraisers, Examiners, Superintendent, Inspectors, Preventive Officers, Women Searchers, Ministerial Officers and Class IV Officers in the Customs Department in any place in India. Officers of DRI, Narcotics Control Bureau and EIB appointed as "Officers of Customs". - In exercise of the powers conferred by sub-section (1) of Section 4 of the Customs Act, 1962 (52 of 1962) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No.38/63 - Customs, dated 1st February, 1963 the Central Government hereby appoints the following persons to be the Officers of Customs, namely:-

1.Appraisers, Examiners, Superintendent Customs (Preventive), Preventive Officers, Women Searchers, Ministerial Officers and Class IV Officers in the Customs Department in any place in India.

(2) Superintendents, Inspectors, Women Searchers, Ministerial staff and Class IV staff of Central Excise

Department, who are for the time being posted to a Customs port, Customs airport, Land-Customs station, Coastal port, Customs preventive post, Customs Intelligence post or a Customs warehouse.

(3)Superintendents and Inspectors of Central Excise Department in any place in India.

(4)All Officers of the Directorate of Revenue Intelligence

(5)All Officers of the Narcotics Control Bureau

(6)All Intelligence Officers of the Central Economic Intelligence Bureau

The power to summon a person to be present and produce documents is given to an Officer of Customs who can summon any person whose attendance if necessary, either to give evidence or to produce a document or any other thing in any enquiry, which he makes under this Act.

Notification No.17/2002 – Cus (N.T) dated 07.03.2002:

Appointment of D.R.I officials as Customs Officers.- *In exercise of the powers conferred by sub-section (1) of Section 4 of the Customs Act, 1962 (52 of 1962) and in supersession of notification of the*

Government of India in the Ministry of Finance (Department of Revenue) No.19/90-Customs (N.T.) dated the 26th April, 1990, the Central Government appoints the officers mentioned in Column (2) of the Table below to be the [Principal Commissioner of Customs or Commissioner of Customs], the officers mentioned in column (3) thereof to be the Additional Commissioners of Joint Commissioners of Customs and Officers mentioned in column (4) thereof to be the Deputy Commissioners or Assistant Commissioners of Customs for the areas mentioned in the corresponding entry in column (1) of the said Table with effect from the date to be notified by the Central Government in the official Gazette:-

Area of jurisdiction	*Designation of the officers*		
(1)	*(2)*	*(3)*	*(4)*
Whole of India	*[Principal Additional Director General or Additional Director General of Revenue Intelligence posted at Headquarters and Zonal/regional units]*	*Additional Directors,, or Joint Directors of Directorate of Revenue Intelligence posted at Headquarters and Zonal/regional Units*	*Deputy Directors or Assistant Directors of Directorate of Revenue Intelligence posted at Headquarters and Zonal/regional Units*

9.Section 3 of the Customs Act, 1962 sets out the classes of officers of customs as follows:

(a)Chief Commissioner of Customs;
(b)Commissioners of Customs;
(c) Commissioners of Customs (Appeals);
(d)Deputy Commissioners of Customs;
(e)Assistant Commissioners of Customs; and
(f)such other class of officers of customs as may be appointed for the purposes of this Act".
(emphasis supplied)

10.Section 3(f) of the said Act makes it clear that such other class of officers of customs may also be appointed as an officer of Customs for the purposes of this Act and perform duties as prescribed.

11.Section 4(1) of the said Act enables the Board to appoint such persons as it thinks fit to be officers of customs and that is referable to Notification No.31/97 - Cus (NT) dated 07.07.1997.

12.Powers to such officers to implement the provisions of the said Act can be traced to Section 5(1) and that includes issuance of summons under Section 108 of the said Act.

13.We find that the Notification No.31/97 - Cus (NT) dated 07.07.1997 has been issued in exercise of the powers conferred by sub section (1) of Section 4 of the Customs Act, 1962, Ministry of Finance to appoint all Officers of the Directorate of Revenue Intelligence as Officers of Customs. Therefore, they can discharge the duties prescribed in Section 5 of the said Act to implement the provisions of the Act.

14.Notification No.17/2002 - Cus (N.T) dated 07.03.2002 also states that all Officers of the Directorate of Revenue Intelligence as Officers of Customs which we have already referred to above. Therefore, the Senior Intelligence Officer in the present case has the power and jurisdiction to issue summons. He is an Officer of Customs and therefore, the summons issued under Section 108 is in order and valid by law.

15.The plea of the appellant that only the Officer upto the rank of Deputy Director or Assistant Director, Directorate of Revenue Intelligence alone are Officers of Customs is totally misconceived. That notification which we have already referred to above, deals with a particular class of officers in the rank of Principal Additional Director General or Additional Director General, Directorate General of Revenue Intelligence, Additional Directors or Joint Directors of DRI and Deputy Directors or Assistant Directors of DRI. That notification enables the said officers to exercise jurisdiction, whole of India. It does not curb the powers of Senior Intelligence Officer to exercise his power as an Officer of Customs as provided under Section 5(1). The Officers of Directorate of Revenue Intelligence, consequent to designation as Officer of Customs in terms of Notification No.31/97 - Cus (NT) dated 07.07.1997, have the power and jurisdiction to enforce the provisions of the Act. Absolutely there is no basis for the appellant to contend that the Directorate of Revenue Intelligence lack jurisdiction to issue summons.

16.The learned Single Judge was right in dismissing the writ petitions on the ground that the issue relates to issuance of summons and it should not be interfered.

17.We find no merits in the Appeal. Hence, this Writ Appeal is dismissed. The authority concerned is entitled to proceed with the enquiry without any further delay. No costs. Connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(Crl.Side)

/True Copy/

Sub Assistant Registrar.

Mj
To

1.The Additional Director
Department of Revenue Intelligence
Chennai.

2.The Senior Intelligence Officer,
Directorate of Revenue Intelligence
22/14, Celin Garden
Roche Colony, South Beach Road,
Tuticorin.

+one cc to KA.Ramakrishnan, Advocate in SR.No.61054
+one cc to Mr.R.Aravindan, Advocate in SR.NO.60645

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CSL/SKS-RR/05.11.2015
6P/5C