IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.2.2016

CORAM

THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

Writ Appeal Nos.1709 & 1710 of 2015
and
M.P.Nos.1 of 2015 (2 cases)

M/s.Sheer Gold Private Limited,
No.10/3 Barnaby Road,
Kilpauk, Chennai 600 010.
(rep. by its Director
Sri.Suresh Kumar B.Jain) Appellant in W.A.No.1709 of 2015

M/s.S.C.Shah Exports,
No.315, Mint street,
Chennai 600 003.
(rep. by its Proprietor
Sri.Narendar Shah) Appellant in W.A.No.1710 of 2015

Versus

1. The Commissioner of Customs (Air)
   New Building, Air Cargo Complex,
   Meenambakkam, Chennai 600 027.

2. Additional Director General
   Directorate of Revenue Intelligence,
   No.25, Gopalakrishnan Street,
   T.Nagar, Chennai 600 017. Respondents in both appeals.

Prayer: Appeals filed under Clause 15 of Letters Patent against the common order dated 9.10.2014 in W.P.Nos.238 and 239 of 2014. Writ petition filed under Article 226 of the constitution of India praying to issue a writ of certiorarified Mandamus to call for the entire records relating to the Show Cause Notice F.No.VIII/ 48/37/2012-DRI dated 21.12.2012 and Corrigendum dated 29.5.2013 issued by the second respondent and issue direction to the first respondent to provide the documents/ information as requested for by the petitioner in their letter dated 10.1.2013 and quash the order Letter F.No.CAU/ DRI/(CH)/ 01/2013-AIR dated 26.11.2013 issued by the first respondent;

For Appellants : Mr.S.Venkatachalam

For Respondents : Mr.V.Sundareswaran

COMMON JUDGMENT

(Judgment of the court was delivered by V.RAMASUBRAMANIAN, J.)

These writ appeals arose out of a common order passed by the learned Judge in two Writ Petitions filed by the appellants herein, challenging the refusal of the adjudicating authority to provide copies of certain documents mentioned in the show cause notice.

2. Heard Mr.S.Venkatachalam, learned counsel appearing for the appellant and Mr.V.Sundareswaran, learned Senior Panel Counsel for the respondent.

3. The appellants are said to have imported gold jewellery from Thailand by availing the benefit of exemption under Customs Notification No.85/2004 dated 31.8.2004 read with Customs Notification No.101/2004 dated 31.8.2012.

4. On the basis of intelligence, the officials of the Directorate of Revenue Intelligence conducted a search in the premises of the appellants and issued show cause notice dated 21.12.2012 under section 124 of the Customs Act, 1962. In the show cause notice, the second respondent herein claimed that the certificates produced by the appellants, from the parties in Thailand which allegedly sold the gold jewellery to them, were referred to Government of Thailand for verification. Therefore, the appellants sought copies of those documents.

5. However, by letter dated 13.11.2013, the adjudicating officer claimed that those documents are not sought to be relied upon in the adjudication proceedings. Therefore, challenging the denial of copies of those documents, the appellants filed two writ petitions in W.P.Nos.238 and 239 of 2014. The writ petitions were dismissed by the learned Judge by an order dated 9.10.2014 forcing the appellants to come up with the above appeals.

6. At the outset, it should be pointed out that the appellants have approached this court at the stage of show cause notice. The adjudication proceedings are not yet complete. It is true that the show cause notice made a mention about certain documents, but, by the orders impugned in the writ petitions, the Department has taken a stand that those documents are not relied upon. Once the Department takes a stand that they are not relying upon certain documents mentioned in the show cause notice, there is no way the appellants could compel the Department to furnish copies of such documents before adjudication. If at all the Department relies upon any document that they do not furnish to appellant, the appellant can always challenge the order in original passed thereafter, on the ground of violation of principles of natural justice. But, at the stage of adjudication proceedings, the appellant cannot forestall the enquiry. Therefore, we find nothing wrong in the order of the learned Judge. Hence, the writ appeals are

dismissed. It is open to the appellant to raise all those points before the adjudicating officer. No costs. The connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

ssk.

To:

1. The Commissioner of Customs (Air)
   New Building, Air Cargo Complex,
   Meenambakkam, Chennai 600 027.

2. Additional Director General
   Directorate of Revenue Intelligence,
   No.25, Gopalakrishnan Street,
   T.Nagar, Chennai 600 017.

+ 2 ccs to Mr.S. Venkatachalam, Advocate Sr.12453, 12452
+ 1 cc to Mr.V. Sundareswaran, Advocate Sr.12369

W.A.Nos.1709 & 1710 of 2015

AD(CO)
Eu 23.03.16