

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 11.07.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.13224 of 2016 &
WMP Nos.11593 & 11594 of 2016

V.K.Industrial Corporation Limited
rep. by its Director Mr.Virendra Mehta .. Petitioner

Vs

- 1.The Principal Commissioner of Customs
Chennai III Commissionerate
Customs House, 60 Rajaji Salai
Chennai 600 001.
- 2.The Deputy Commissioner of Customs (SIIB)
Customs House, 60 Rajaji Salai
Chennai 600 001.
- 3.The Appraiser of Customs
Special Investigation and Intelligence Branch
Customs House, 60 Rajaji Salai
Chennai 600 001. .. Respondents

Prayer: The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of certiorari to call for the records pertaining to the impugned detention notice dated 03.02.2016, issued in F.No.ENQ 03 /2016-SIIB issued by the 2nd respondent and quash the same.

For Petitioner : Mr.Hari Radhakriahnan

For Respondents: Mr.A.P.Srinivas
Sr.Standing Counsel

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O R D E R

Heard Mr.Hari Radhakriahnan, learned Counsel appearing for the petitioner and Mr.A.P.Srinivas, learned Senior Standing Counsel appearing on behalf of the respondents and with the consent of learned counsel appearing on either side, this writ petition itself is taken up for final disposal.

2.The petitioner has filed this Writ Petition, challenging the Detention Notice dated 03.02.2016, in and by which, several consignments which were imported under various Bills of Entry filed by the petitioner through their Customs House Agent were detained.

3.The Detention Notice states that the investigation into possible evasion of Safeguard Duty is in progress and therefore, the goods have been detained and the petitioner has been restrained from removing the goods, covered under the Bills of Entry.

4.During the pendency of the Writ Petition, few bills of entry have been cleared by the Department on verification and the only one bill of entry which has not been cleared which is taken up for investigation is B.E.No.3371951 dated 25.11.2015, the description as found in the bill of entry is 'Hot Rolled Alloy Steel Coils'.

5.The respondents have filed a counter affidavit. Firstly it has been stated that a Detention Notice cannot be the subject matter of challenge in a Writ Petition. Secondly, it has been stated that during the course of examination, since, incriminating evidence have been recovered from the impugned consignments, they are liable for confiscation and proceedings under section 110 of the Customs Act has been contemplated.

6.It is submitted by the learned counsel that the matter has been taken up for investigation on the ground that in the steel coils there are stickers affixed by the supplier, indicating the grade and if the coils are to be taken to be of such grade, then the petitioner has to pay 'Safeguard Duty'.

7.The learned counsel for the petitioner submitted that all the coils do not contain such stickers and only few of the coils contain stickers, but that by itself cannot be the basis to determine the grade of the coil and the petitioner is ready and willing to subject the imported goods for testing by the Government of India Laboratory viz. National Test House at Taramani, Chennai.

8.After hearing the parties and perusing the averments made in the counter affidavit, it shows that the respondents are inclined to consider for provisional release of the goods. Therefore, this Court is of the view that a direction can be issued so that the entire proceedings can be completed instead of issuing a direction for considering provisional release. However, while doing so, this Court indicates clearly that the prayer as sought for by the petitioner cannot be granted as a

writ of certiorari cannot be issued against a Detention Notice. In any event, the Department cannot be enjoined from taking up the matter for investigation.

9..However, taking into consideration of the fact that the Department themselves released the goods covered under other Bills of Entry, which were also the subject matter of detention, this Court is inclined to direct the respondents 2 & 3 to draw samples from the goods which have been detained, in the presence of the petitioner, both from the coils which contain labels indicating the grade and also from the coils which do not contain such labels, within a period of one week from the date of receipt of a copy of this order and send the same to the National Test House, Taramani, Chennai, for testing the grade of the coils and for submission of the report. The cost for such test shall be borne by the petitioner. On receipt of the report and after furnishing a copy thereof to the petitioner, the respondents shall finally assess the bill of entry and pass appropriate orders, within a period of two weeks from the date of receipt of a copy of the Test Report. It is needless to mention that the petitioner should co-operate in the proceedings which is to be initiated by the respondents 2 & 3.

Thus, while rejecting the prayer to quash the detention notice, the Writ Petition is disposed of on the above terms. No costs. Consequently, connected Miscellaneous Petitions are closed.

s/d-
Assistant Registrar(CS-VII)

True Copy

Sub-Assistant Registrar

To

1.The Principal Commissioner of Customs
Chennai III Commissionerate
Customs House, 60 Rajaji Salai, Chennai 600 001.

2.The Deputy Commissioner of Customs (SIIB)
Customs House, 60 Rajaji Salai, Chennai 600 001.

3.The Appraiser of Customs
Special Investigation and Intelligence Branch
Customs House, 60 Rajaji Salai, Chennai 600 001.

+ 1 cc to Mr.Hariradhakrishnan, Advocate SR 38579
+ 1 cc to Mr.A.P.Srinivas, Advocate SR 38887

gr(co)
prk19/7

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