IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 27.06.2016

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.23984 to 23986 of 2015 &
M.P.Nos. 1 to 1 of 2015

Vijayaraj Surana .. Petitioner in W.P.No.23984 of 2015
Managing Director
M/s.Surana Corporation Ltd.
No.161 N.S.C. Bose Road,
Sowcarpet, Chennai.

J.Thiyagarajan .. Petitioner in W.P.No.23985 of 2015

G.Venkatesh .. Petitioner in W.P.No.23986 of 2015

Vs

1 The Commissioner of Customs
Chennai III Commissionerate
Custom House,No.60 Rajaji Salai
Chennai 600 001. .. Respondent in all W.Ps.

COMMON PRAYER:

Petitions filed under Article 226 of The Constitution of India praying for issuance of writ of certiorarified mandamus to call for the records of the respondent herein culminating in the order dt 21.7.2015 issued from File No.OS.15/2014 PAU (DRI/CZU/VIII/48/15 (INT-15)/2014) and quashing the same and direct the respondent herein to permit cross examination of Mr.Vadiga Sathyanarayana, Mr.P. Balaji and Mr.Santhoshishwar Chandan Shive.

For Petitioners : Mr.S.Murugappan
(in all W.Ps)

For Respondent : Mr.K.Mohana Murali
(in all W.Ps) Central Government Standing Counsel

C O M M O N O R D E R

Heard Mr.S.Murugappan, learned Counsel appearing for the petitioners and Mr.K.Mohana Murali, learned Central Government Standing Counsel appearing on behalf of the respondent and with the consent of learned counsel appearing on either side, these writ petitions are taken up for final disposal.

2.The petitioner in W.P.No.23984 of 2015 is the Managing Director of M/s Surana Corporation Limited and the petitioners in W.P.Nos.23985 & 23986 of 2015 are the employees of the said Company. The petitioners have come forward with these Writ Petitions for quashing the order passed by the respondent dated 21.07.2015 and to direct the respondent to permit them to cross examine all the three witnesses namely Mr.Vadiga Sathyanarayana, Mr.P. Balaji and Mr.Santhoshishwar Chandan Shive.

3.The Directorate of Revenue Intelligence (DRI) have seized 8 pieces of Gold Bars from one Vadiga Sathyanarayana. Based on the seizure, enquiries were made with M/s SLN Securities and Forex Private Limited, Sowcarpet, Chennai; documents were seized; statements were recorded from the Director, wherein it has been stated that the Gold Bars were purchased from M/s Surana Corporation Ltd., of which the petitioner in W.P.No.23984 of 2015, is the Managing Director. Based on the said statement, DRI caused an inspection on the business premises of M/s Surana Corporation Ltd., made further enquiries and statements were also recorded from their employees. Subsequently, show cause notices were issued to the petitioner in W.P.No.23984 of 2015, in the capacity of the Managing Director of the Company and to the petitioners in W.P.Nos.23985 and 23986 of 2015, who are employees of the said Company, calling upon them to show cause as to why penalty should not be imposed and the show cause notices were answerable to the respondent. On receipt of the show cause notices, the petitioners requested permission to cross examine the aforementioned three persons, from whom statements have been recorded by the DRI. However, by letter dated 07.07.2015, the respondent intimated that the petitioners have not specified the point in respect of which, they wanted cross examination of those three persons and it was further stated that the statements given by those three persons have been voluntarily based on evidence under section 108 of the Customs Act, 1962, the question of affording an opportunity to cross examine cannot be permitted. Subsequently, the petitioners sent letter through their Counsel, which came to be rejected by the impugned order.

4.In the impugned order, it has been stated that providing an opportunity to cross examination of witness is not mandatory and in support of such conclusion, the respondent referred to the decision of the Hon'ble Supreme Court in the case of KANUNGO & CO. v. COLLECTOR [1983 (13) E.L.T. 1486 (S.C.)]. Challenging the same, the present Writ Petitions have been filed.

5.After hearing the learned counsels for the parties and perusing the materials placed on record, including the counter affidavits filed by the respondent, the only issue to be considered in this case is as to whether the respondent is justified in rejecting the request made by the petitioners to cross examine the three persons whose names have been mentioned above, on the grounds set out in the impugned order.

6.The decision in the case of KANUNGO & CO. (supra), arouse out of a Judgment of the Calcutta High Court, which reversed the decision of the Single Judge, who had quashed the order passed by the Additional Collector of Customs, Calcutta, confiscating 280 watches of the Appellant under section 167 (8) of Sea Customs Act read with section 3(2) of the Imports and Exports (Control) Act, 1947. One of the questions was, if the person giving information is not allowed for cross examination, whether it can be termed that the principles of natural justice is violated . The Hon'ble Supreme Court after examining the factual position, held that in the show cause notice issued to the appellant therein, all the materials on which the Customs Authorities have relied were set out and it was then for the appellant to give a suitable explanation and the complaint over the statement should have been recorded in the presence of the appellant or should be allowed to be cross examined by them on the statements made before the Customs Authorities, is not necessary and it would not amount to violation of principles of natural justice, if such opportunity is not granted.

7.However, it has to be noted that each case has to be decided on its peculiar facts. Admittedly, statements have been recorded by the respondent from those three persons under section 108 of the Customs Act, 1962 and the matter is at the threshold. Therefore, while adjudicating the show cause notices, if the respondent propose to rely any of those statements, the petitioners should be given fair opportunity, because the show cause notices appear to be solely based upon the statements recorded from those three persons. Therefore, in my view, the facts of the present case would require opportunities to the petitioners to cross examine those three persons, in the event the respondent proposes to rely upon their statements. If the respondent does not propose to rely upon those statements while adjudicating the show cause notices, then the question of affording an opportunity of cross examination would not arise. However, for that reason, the petitioners should submit their reply to the show cause notices and at the time of adjudication, make a request to the authority for cross examination, which shall be considered in accordance with law.

8.In the light of the above, the Writ Petitions are allowed and the impugned order is quashed. The petitioners are granted six weeks time to submit their reply to the show cause notices dated 05.11.2014, and thereafter opportunity of personal hearing shall be granted to the petitioners, in which the petitioners can request the respondent to provide the opportunity of cross examining the aforementioned three persons namely Mr.Vadiga Sathyanarayana, Mr.P. Balaji and Mr.Santhoshishwar Chandan Shive, from whom statements have been recorded, in the event, the respondent propose to rely upon during adjudication of the show cause notices. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1 The Commissioner of Customs
Chennai III Commissionerate
Custom House,No.60 Rajaji Salai
Chennai 600 001.

3 ccs to Mr.S.Murugappan, Advocate, sr.35577
1 cc to Mr.K.Mohana Murali, Advocate, sr.35596

W.P.Nos. 23984 to
23986 of 2015

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