IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2016

CORAM

THE HONOURABLE Mr. JUSTICE M.DURAISWAMY

W.P.Nos.36889 & 36890 of 2015 &

M.P.Nos.1 & 1 of 2015

M. Rathakrishnan .. Petitioner in W.P.No.36889/2015
D.Muralidharan .. Petitioner in W.P.No.36890/2015

v.

1 Additional Director General
Directorate of Revenue Intelligence
No.27 Adarsh Towers
G.N. Chetty Road
Chennai - 600 017

2 The Commissioner of Customs
Chennai III Commissionerate
Custom House
No.60 Rajaji Salai
Chennai - 600 001 .. Respondents in both W.Ps

Writ Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned show cause notice dated 08.05.2015 issued in F.No. VIII/48/42/2011-DRI CZU and F. No. VIII/26/331/2011 DRI CZU issued by the 1st Respondent and quash the same.

For Petitioners : Mr.Hari Radhakrishnan

For Respondents : Mr.T.Chandrasekaran

COMMON ORDER

The petitioners have filed the above writ petitions to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned show cause notices dated 08.05.2015 issued by the first respondent and to quash the same.

2. The first respondent issued the show cause notices dated 08.05.2015 calling upon the petitioners to show cause as to why penalty should not be imposed on them under sections 112 and 114AA of the Customs Act, 1962.

3. The petitioners mainly contended that the show cause notices issued by the first respondent are liable to be set aside on the ground that the first respondent pre-judged the issue involved in the matters.

4. It is the case of the petitioners that the first respondent should have issued the show cause notices with an open mind as they have to act fairly in adjudging the guilt or otherwise of the person proceeded against.

5. Mr.Hari Radhakrishnan, learned counsel appearing for the petitioners relied upon paragraph Nos. 24 and 31 of the show cause notices dated 08.05.2015 wherein, the first respondent has stated as follows:-

> "24.As per para 23 supra the reasoning advanced by the importer is contrary to what has been stated by the CHA/s Cs. Hence it can be concluded that to clear the imported consignment by mis-declaration of description coupled with undervaluation,l port-hopping has been resorted to by the importer in collusion with the CHAs/CBs. ... "
>
> "31. In the instant case, the investigation done by CZU-DRI has revealed that M/sMaxx Power Tools Pvt. Ltd whose Directors S/Shri Fakri Master, Shabbir Stuterwala with the aid of M/s.Pluto Shipping & Consultancy Pvt. Ltd., M/s. Pluto Shipping & Logistics Pvt. Ltd and Vee Vee Clearing & Forwarding Pvt. Ltd. have actively colluded in mis-declaring the description and value of goods imported thereby them, in the bill of entry examined by CZU-DRI. ..."
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> Further, in the same paragraph it has been stated as follows: -
>
> "... Their accomplices in this arrangement were S/Shri M.Rathakrishnan and D.Muralidharan, who actively connived with and were instrumental in getting the impugned electrical operated power tools illegally imported by wilful mis-declaration of the value of the imported goods and its description by not declaring the actual quantity, brand and cleared the same. ..."

on a reading of the contents of paragraph Nos. 24 and 31 of the show cause notices dated 08.05.2015, it is clear that the first respondent had issued the show cause notices with pre-determined mind and the same were not issued with an open mind by the first respondent. The issuance of show cause notices with pre-judged mind cannot be allowed.

6. The learned counsel appearing for the petitioners, in support of his contention relied upon a judgement of the Hon'ble Supreme Court reported in 2011(266) E.L.T.422 (S.C.) [Oryx Fisheris Private Limited v. Union of India], wherein, the Hon'ble Supreme Court held as follows:-

"22. Relying on the underlined portions in the show cause notice, learned counsel for the appellant urged that even at the stage of the show cause notice the third respondent has completely made up his mind and reached definite conclusion about the alleged guilt of the appellant. This has rendered the subsequent proceedings an empty ritual and an idle formality.

23. This Court finds that there is a lot of substance in the aforesaid contention.

24. It is well settled that a quasi-judicial authority, while acting in exercise of its statutory power must act fairly and must act with an open mind while initiating a show cause proceeding. A show cause proceeding is meant to give the person proceeded against a reasonable opportunity of making his objection against the proposed charges indicated in the notice.

31. It is of course true that the show cause notice cannot be read hyper-technically and it is well settled that it is to be read reasonably. But one thing is clear that while reading a show-cause notice the person who is subject to it must get an impression that he will get an effective opportunity to rebut the allegations contained in the show cause notice and prove his innocence. If on a reasonable reading of a show-cause notice a person of ordinary prudence gets the feeling that his reply to the show cause notice will be an empty ceremony and he will merely knock his head against the impenetrable wall of prejudged opinion, such a show cause notice does not commence a fair procedure especially when it is issued in a quasi-judicial proceeding under a statutory regulation which promises to give the person proceeded against a reasonable opportunity of defence.

32. Therefore, while issuing a show-cause notice, the authorities must take care to manifestly keep an open mind as they are to act fairly in adjudging the guilt or otherwise of the person proceeded against and specially when he has the power to take a punitive step

against the person after giving him a show cause notice.

44. For the reasons aforesaid, this Court quashes the show cause notice as also the order dated 19.03.2008 passed by the third respondent. In view of that, the appellate order has no legs to stand and accordingly is quashed.

45. We are constrained to observe that unfortunately this aspect of the matter was not considered by the High Court. We cannot, therefore, approve the order of the High Court and the same is accordingly quashed. The cancellation of the registration certificate of the appellant is set aside and we declare the registration to be valid if it is not vitiated for any other reason.

46. We, however, make it clear that if the authorities are so inclined, they can proceed from the stage of show cause notice afresh but strictly in accordance with law and following the fair procedure indicated in this judgment.”

7. From the judgment of the Hon'ble Supreme Court, it is clear that the first respondent, being a quasi-judicial authority, while, acting in exercise of its statutory power, must act fairly and must act with an open mind, while initiating show cause proceeding.

8. Mr.T.Chandrasekaran, learned Standing Counsel, appearing for the respondents submitted that the writ petitions are not maintainable, since the petitioners are challenging the show cause notices, cannot stand for the reason that show cause notices itself were issued in an erroneous manner.

9. When the first respondent had issued the show cause notices with pre-judged mind, there is no purpose in issuing show cause notices at all. The first respondent should have taken utmost care to manifestly keep an open mind, as they have to act fairly in adjudging the guilt of the petitioners and especially when he has a power to take punitive steps against the petitioners after giving them a show cause notice.

10., A reading of the wordings used in paragraph Nos.24 and 31 of the show cause notices would clearly establish that the first respondent had pre-determined mind at the time of issuance of show cause notices.

11. In these circumstances, following the ratio laid down by the Hon'ble Supreme Court reported in 2011(266) E.L.T.422 (S.C.) [cited supra], I am of the considered view that

the show cause notices dated 08.05.2015 are liable to be set aside. Accordingly, the same are set aside. However, I make it clear that if the authorities are so inclined, they are at liberty to issue show cause notices afresh, but, strictly, in accordance with law and following the fair procedure indicated by the Hon'ble Supreme Court.

With these observations, the writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1 The Additional Director General,
Directorate of Revenue Intelligence,
No.27 Adarsh Towers,
G.N. Chetty Road,
Chennai - 600 017.

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

+1cc to Mr.HariRadhakrishnan, Advocate, S.R.No.10607
+2cc to Mr.T.Chandrasekaran, Advocate, S.R.No.10405&10406

W.P.Nos.36889 & 36890 of 2015 &
M.P.Nos.1 & 1 of 2015

sk(CO)
srg(25/02/2016)