In the High Court of Judicature at Madras

Dated : 21.10.2016

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Review Application Nos.133 to 135 of 2016
and WMP.Nos.31142 to 31147 of 2016

Kamalesh Kumar Jain ...Petitioner in R.A.No.133/2016

Suresh Kumar Jain ...Petitioner in R.A.No.134/2016

Arpit Jain ...Petitioner in R.A.No.135/2016

Vs

1.The Additional Director General,
Directorate of Revenue Intelligence,
No.27, Adarsh Towers, G.N.Chetty
Road, Chennai-17.

2.The Commissioner of Customs,
Chennai II Commissionerate,
Custom House, No.60, Rajaji
Salai, Chennai-1. ...Respondents in all the RAs

APPLICATIONS under Order XLVII Rule 1 read with Section 114 of the Civil Procedure Code to review the common order dated 14.6.2016 made in W.P.Nos.18886 to 18888 of 2016.

For Petitioners : Mr.Hari Radhakrishnan

For Respondents : Mr.T.Pramod Kumar Chopda

COMMON ORDER

Heard both.

2. These review applications have been filed to review the common order and directions passed by this Court in W.P.Nos.18886 to 18888 of 2016 dated 14.6.2016.

3. The petitioners herein were the petitioners in those writ petitions wherein they challenged the show cause notices issued by the Directorate of Revenue Intelligence dated 28.2.2014 under Sections 28 and 124 of the Customs act, 1962.

4. At the very outset, it is to be pointed out that the petitioners are three among the 17 noticees. The show cause notices were mainly challenged on the ground that they had prejudged the entire issue and that it will be useless formality to submit explanation to the show cause notices. This issue was considered by this Court and by a common order dated 14.6.2016, the writ petitions were dismissed. As against the common order in the writ petitions, the petitioners preferred writ appeals in W.A.Nos.973 to 975 of 2016.

5. With regard to the issue relating to pre-judging the matter, it appears that the petitioners did not canvass any contention before the Hon'ble Division Bench. But, the only ground canvassed before the Hon'ble Division Bench was with regard to the aspect that there is no jurisdiction for the Authority to issue the show cause notices.

6. The Hon'ble Division Bench, in paragraph 6 of its common judgment dated 11.8.2016, pointed out that there is a reference to Customs Notification No.82/2011 dated 25.8.2011 and the Customs Tariff (Determination of Origin of Goods under the Preferential Trade Agreement between the Government of Members States of the Association of South East Asian Nations (ASEAN) and the Republic of India) Rules 2009 only in the context of the submission made that the issue is predetermined and after extracting paragraph 2 of the order impugned therein, the Hon'ble Division Bench recorded the submission of the learned counsel for the petitioners that though a specific ground has been raised with regard to jurisdiction of the Authority to issue the show cause notices, the Writ Court has not adverted to the same and therefore, liberty has been granted to the petitioners to file review petitions before this Court. Accordingly, these review applications have been filed on the ground that the Writ Court has not rendered a finding with regard to the jurisdictional aspect raised by the petitioners.

7. I have heard the learned counsel on either side.

8. In ground No.(f) of the grounds in the affidavits filed in support of the writ petitions, the petitioners would contend that the show cause notices are liable to be set aside on the ground that they are without jurisdiction. The contention raised by the petitioners is not to the effect that the officer, who issued the show cause notices, lacks jurisdiction to

issue the same. But, the challenge is on the ground that the country of origin certificate has not been proved to be false or fabricated. The submission is that if a certificate has been produced to prove the country of origin of particular goods, if the certificate is to be disbelieved, then the procedure under the said Rules, 2009 will have to be followed and without following the same, the show cause notices cannot be issued and that therefore, they are without jurisdiction.

9. Thus, the jurisdictional issue raised by the petitioners is not a pure question of law, but a mixed question of fact and law. Therefore, this aspect also requires to be adjudicated by the Authority, since the correctness of the submission of the petitioners as to whether the country of origin of the goods was rightly disbelieved or not, is a subject matter of adjudication. Therefore, at this stage, if any finding is to be recorded by this Court, then it would amount prejudging the issue, which is now pending in the show cause notice stage. Therefore, on the grounds raised by the petitioners, the order and direction issued by this Court does not call for any interference.

10. Accordingly, the review applications fail and are therefore dismissed. No costs. Consequently, the above WMPs are also dismissed.

21.10.2016

Internet : Yes

To

1.The Additional Director General, Directorate of Revenue Intelligence,
No.27, Adarsh Towers, G.N.Chetty Road, Chennai-17.
2.The Commissioner of Customs, Chennai II Commissionerate,
Custom House, No.60, Rajaji Salai, Chennai-1.

RS

T.S.SIVAGNANAM,J

RS

R.A.Nos.133 to 135 of 2016 and
WMP.Nos.31142 to 31147 of 2016

21.10.2016