IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11/8/2016

C O R A M

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE D.KRISHNA KUMAR

Writ Appeal Nos.973 to 975 of 2016

Kamalesh Kumar Jain ... Appellant in W.A.No.973 of 2016

Suresh Kumar Jain ... Appellant in W.A.No.974 of 2016

Arpit Jain ... Appellant in W.A.No.975 of 2016

Vs

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 II Commissionerate
   Custom House
   No.60 Rajaji Salai
   Chennai 600 001. ... Respondents in all the appeals

Prayer: Writ Appeals filed under Section 15 of the Letters Patent against the order dated 14/6/2016 passed in W.P.No.18886, 18887 and 18888 of 2016.

WP.No.18886, 18887 and 18888 of 2016:These Writ Petitions are filed Article 226 of the Constitution of India, seeking for a Writ of Certiorari to Call for the records pertaining to the impugned show cause notice dated 28.02.2014 issued in F.No.F. No.VIII/26/183/2013-DRI by the 1st respondent and quash the same.

For appellants ... Mr.Hari Radhakrishnan

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COMMON JUDGMENT

(Judgment of the Court was made by S.MANIKUMAR, J)

Writ Appeals have been filed against the common order, dated 14/6/2016, passed in W.P.No.18886, 18887 and 18888 of 2016.

2. At the outset, Mr.Hari Radhakrishnan, learned counsel for the appellants submitted that he is not going to advance arguments, on the issue of pre-determination, in issuing the show cause notice, one of the grounds raised in the writ petitions. Submission of the learned counsel is placed in record. Therefore, we are not called upon to decide the said issue.

4. Before the writ Court, to quash the show cause notice, dated 28/2/2014, learned counsel for the petitioners therein, had referred to the Customs Notification No.82 of 2011, dated 25/8/2011 and 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, Rule No.13 and Annexure 3 under Rule 13 and ground No.(f), raised in the supporting affidavits to the writ petitions.

5. Mr.Hari Radhakrishnan, learned counsel for the appellants, by referring to paragraph No.2 of the impugned order, contended that the show cause notice is without jurisdiction, and that the said aspect has not been adverted to by the writ Court.

6. Going through the order impugned before us, in entirety, we find that 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, have been made, only in the context of the submission made that the impugned show cause notice as pre-determined.

7. For brevity, relevant paragraph of the impugned order is extracted hereunder:-

"2. The petitioner in W.P.No.18888 of 2016, is a proprietor of M/s.Kumar Distributors engaged in business trading of PVC flex banners and the other Writ Petitioner Suresh Kumar Jain is his brother. The DRI received specific intelligence that various Indian importers have been importing PVC flex banners of Chinese origin through Malaysia with the help of a person at Mumbai. Search was conducted at Mumbai and on further investigation, it was found that M/s.Kumar Distributors, petitioner in W.P.No.18888 of 2016, have imported PVC flex banners of chinese origin from the said agency at Mumbai and accordingly, search was conducted in the petitioner's premises as well as in their godown. A statement was recorded from the petitioner in W.P.No.18888 of 2016 on 23.07.2013, under Section 108 of the Customs Act, apart from statements being recorded from the employees of the Writ Petitioner and the persons concerned with the agency at Mumbai. In the impugned show cause notice, all the statements have been referred to including the statement of the petitioner in W.P.No.18887 of 2016, and on a perusal of the same, it is seen that the modus operandi adopted has been spelt out. The petitioners have challenged the impugned show cause notice on the ground that in several paragraphs of the show cause notice, the respondent has pre-judged the matter and submitting a reply to the impugned show cause notice is an empty formality. In this regard, the learned counsel elaborately referred to the various paragraphs in the show cause notice with a view to demonstrate that the authority has pre-decided the issues. By referring to the decision of the Hon'ble Supreme Court in the case of Oryx Fisheries Private Limited vs. UOI reported in 2011 (266) E.L.T., 422 (S.C)., it is submitted that the respondent being a quasi judicial authority should act with an open mind and a person who reads a show cause notice should get a feeling that the reply will not be an empty formality and he will get effective opportunity to rebut the allegations and prove his innocence. Therefore, it is submitted that in the impugned show cause notice, the respondent has pre-decided the matter and therefore, the petitioners are justified in approaching this Court to quash the show cause notice. The learned counsel referred to the Customs Notification No.82 of 2011, dated 25.08.2011 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 if India] Rules, 2009 and referred to Rule No.13 and annexure 3 under Rule 13, to substantiate the case factually."

8. Inasmuch as Mr.Hari Radhakrishnan, learned counsel for the appellants submitted that though a specific ground has been raised, but not adverted to, by the writ Court, we are inclined to grant liberty to the appellants to seek for a review of the impugned orders, if so advised.

9. With the above direction, these Writ Appeals are disposed of. No costs. Consequently, the connected Miscellaneous Petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

mvs.

To

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+3 ccs to M/s.Hari Radhakrishnan Advocate sr 45920
+1 cc to Raj Jhabakh Advocate sr 46466

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aa14/09/2016