

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2016

CORAM

THE HONOURABLE Mr. JUSTICE M.DURAI SWAMY

W.P.Nos.2782 and 2783 of 2002

Madura Coats Limited
represented by its Vice President-Excise
New Jail Road, Madurai 625 00.Petitioner in both WPs

Vs

The Deputy Commissioner of Central Excise
Madurai 625 002
... Respondent in both WPs

Writ Petitions filed under Article 226 of the Constitution of India to issue a Writ of Prohibition prohibiting the respondent from proceeding any further with the proceedings initiated vide show cause notice Nos.22/2001 dated 07.11.2001 and No.21/2001 dated 01.11.2001 respectively.

For Petitioner : Mr.Sriram Panchu, Senior Counsel
for Mr.T.Mohan

For Respondent : Mr.P.Mahadevan
Senior Central Government
Standing Counsel

COMMON ORDER

The petitioner has filed the above writ petitions to issue a Writ of Prohibition prohibiting the respondent from proceeding any further with the proceedings initiated vide show cause notice Nos.22 and No.21 of 2001 dated 07.11.2001 dated 01.11.2001 respectively.

2. According to the petitioner, the petitioner Company is a 100% Export Oriented Unit (EOU). The unit was duly registered with the Central Excise Authorities and the Unit was also licensed to operate as a 100% EOU for the manufacture of cotton fabrics, blended fabrics, cotton yarn and staple yarn of different blends for export out of India. In these writ petitions, the petitioner is challenging the show cause notice Nos.22 and No.21 of 2001 dated 07.11.2001 dated 01.11.2001

respectively, wherein, the respondent demanded the petitioner to show cause as to why a sum of Rs.6,15,58,731/- and Rs.2,26,52,858/- respectively should not be recovered towards component of excise duty allegedly not paid for the clearance of grey and processed fabrics from the 100% EOU during the period 1994 to 1996 in Show Cause Notice No.22/01 and for the period 1993 to 1996 in the Show Cause Notice No.21/01 and demanding penalty under 173-Q of the Central Excise Rules read with Rule 25 of the Central Excise Rules and Section 11 AC and interest under Section 11AB of the Central Excise Act (hereinafter referred to as 'the Act').

3. The only contention raised by Mr.Sriram Panchu, learned Senior Counsel appearing for the petitioner is that since the show cause notices were issued in respect of the periods 1994 to 1996 and 1993 to 1996 respectively, the said show cause notices were issued beyond the period of five years from the relevant date. Hence, they are liable to be set aside under Section 11A of the Central Excise Act. Further, the learned Senior Counsel submitted that if the respondent is proceeding against the petitioner under the Bond dated 03.10.1996 executed by Coats Viyella India Limited, under the provisions of Section 59 of the Customs Act, 1962, in that case, if they allege that there is violation of clause 19 of the Bond, the proceedings should have been initiated under the Customs Act and not under the Central Excise Act. The learned Senior Counsel in support of his contention relied upon the Judgment of the Hon'ble Supreme Court reported in (2007) 13 SCC 270, (Union of India and another vs. Vicco Laboratories) wherein, the Hon'ble Apex Court has held as follows:-

"30. Normally, the writ court should not interfere at the stage of issuance of show cause notice by the author. In such a case, the parties get ample opportunity to put forth their contentions before the authorities concerned and to satisfy the authorities concerned about the absence of case for proceeding against the person against whom the show-cause notices have been issued. Abstinence from interference at the stage of issuance of show cause notice in order to relegate the parties to the proceedings before the authorities concerned is the normal rule. However, the said rule is not without exceptions. Where a show cause notice is issued either without jurisdiction or in an abuse of process of law, certainly, in that case, the writ court would not hesitate to interfere even at the stage of issuance of show cause notice. The

interference at the show cause notice stage should be rare and not in a routine manner. Mere assertion by the writ petitioner that notice was without jurisdiction and/or abuse of process of law would not suffice. It should be prima facie established to be so. Where factual adjudication would be necessary, interference is ruled out".

4. Countering the submissions made by the learned Senior Counsel appearing for the petitioner, Mr.P.Mahadevan, learned Senior Central Government Standing Counsel would submit that the proceedings have been initiated against the petitioner for the violation of the conditions of Bond dated 03.10.1996. Further, the learned counsel submitted that the Bond was valid upto 10.06.2002, whereas the show cause notices were issued on 07.11.2001 and 01.11.2001 respectively.

5. On a perusal of the show cause notices issued to the petitioner, it could be seen that the show cause notices were issued by the Commissioner of Central Excise, Madurai, under the provisions of the Central Excise Act, 1944 and erstwhile Central Excise Rules 1944 and Central Excise (No.2) Rules, 2001 read with Section 38A of the Central Excise Act. Nowhere in the first paragraph of the Show cause notices, the respondent has mentioned about the Customs Act. Since the show cause notices were issued under the Central Excise Act, recovery of duties can be made subject to the provisions of Section 11 A. Under Section 11A(5) of the Customs Act, the Central Excise Officer, shall, within a period of five years from the relevant date, serve a notice on the person chargeable with the duty requiring him to show cause why he should not pay the amount specified in the notice. Even in both the notices, the respondent had demanded the component of excise duty for the period ending the year 1996, however, the show cause notices were issued in the month of November 2001. When that being the case, the demand made by the respondent under Section 11 A of the Central Excise Act, is clearly barred by limitation. If the contention of the learned Senior Central Government Standing Counsel appearing for the respondent that the respondent is proceeding under the Bond dated 03.10.1996 is accepted, then appropriate proceedings should have been initiated under the Customs Act and not under the Central Excise Act. When the show cause notices were issued under the Central Excise Act, the contention raised by the respondent cannot be accepted.

6. Normally, the Writ Court should not interfere at the stage of issuance of show cause notices by the authorities for the reason that the authorities should provide an ample opportunity to put forth their contentions before the

authorities concerned and to satisfy the authorities about the absence of case for proceeding against the persons against whom the show cause notices have been issued. Where a show cause notice is issued either without jurisdiction or in an abuse of process of law, in that case, the writ Court can interfere even at the stage of issuance of show cause notice. It should be prima-facie established to be so.

7. In the case on hand, on the face of the show cause notices, it is clear that the demand made by the respondent is time barred under Section 11 A of the Central Excise Act. when that demand made by the respondent itself is time barred under the Act, I am of the view that this Court can interfere at the stage of issuance of show cause notice. Therefore, show cause notices are liable to be set aside. Accordingly, show cause notices dated 07.11.2001 and 01.11.2001 are set aside. The writ petitions are allowed. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

The Deputy Commissioner of Central Excise,
Madurai 625 002.

+1cc to Mr.T.Mohan, Advocate, S.R.No.15418
+1cc to Mr.P.Mahadevan, Advocate, S.R.No.15560

सत्यमेव जयते W.P.Nos.2782 and 2783 of 2002

kk(CO)
srg(21/03/2016)

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