**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED 07.12.2017**

| *Date of Reserving the Order* | *Date of Pronouncing the Order* |
|---|---|
| **23.11.2017** | **071217** |

**CORAM:**

**THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM**

**W.P.Nos.30066 & 30094 of 2017**
**and**
**W.M.P.No.32637 & 32669 of 2017**

M/s.Sakthi Printeck,
Rep., by Partner,
Mrs.E.Banumathi,
Wife of K.Elumalai
8/18, 3rd Street,
Gopalapuram,
Chennai. ..Petitioner in W.P.No.30066 of 2017

M/s.Sakthi Printeck,
Rep., by Partner,
K.Elumalai,
son of G.Kannappan,
8/18, 3rd Street,
Gopalapuram,
Chennai. ..Petitioner in W.P.No.30094 of 2017

Vs.



1.Deputy Director,
Directorate of Revenue Intelligence,
Chennai Zonal Unit,
G.N.Chetty Road,
T.Nagar, Chennai – 600 017.

2.Senior Intelligence Officer,
Directorate of Revenue Intelligence

Ahmedabad Zonal Unit,
Block No.15, Magnet Corpn., Park,
Near Sola Flyover, Thaltej
Ahmedabad – 380 053. ..Respondents in both W.Ps.,

**Prayer in both W.Ps:** Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus to forbear the respondent from in any way proceeding with any inquiry in pursuance to the summons dated 06.11.2017.

For Petitioner : Mr.B.Kumar Sr., Counsel for Mr.R.Sivakumar

For Respondents : Mr.V.Sundareswaran, SPC

******

***COMMON ORDER***

Both the Writ Petitions have been filed by the partners of M/s.Sakthi Printeck and seek for an identical relief to forbear the second respondent, The Senior Intelligence Officer, DRI, Ahmedabad Zonal Unit from in any way proceeding with any enquiry pursuance to the summons, dated 06.11.2017.

2. The petitioner firm has been importing second hand printing machinery from various countries and have been clearing the same for home consumption. The petitioner appears to have come to adverse notice of the Directorate of Revenue Intelligence, which resulted in issuance of summons directing the partner to appear before the second respondent. The partner had appeared before the second

respondent on 02.01.2017 and 03.01.2017. Subsequently, the another summons dated 10.03.2017, was issued to the partner K.Elumalai, petitioner in W.P.No.30094 of 2017, which was challenged by him in W.P.No.6650 of 2017. The grounds of challenge was that the petitioner had appeared before the second respondent and co-operated with the investigation and submitted all documents, however, he was brutally handled by the officers of the second respondent and issuing further summons calling upon the petitioner to appear without disclosing the reasons for such appearance is not sustainable. This Court considered the legal issue as to whether a Writ Court can injunct or quash the summons and after taking note of the Hon'ble Supreme Court in the case of ***Commissioner of Customs, Calcutta, vs. MM Exports,*** reported in ***2007 (212) ELT 165,*** by order dated 04.07.2017, held that the Writ Petition was not maintainable and accordingly, dismissed the same, giving liberty to the respondents to issue fresh summons setting out the reasons for which the petitioner is to be summoned before the second respondent by invoking power under Section 108 of the Customs Act, 1962 and proceed in accordance with law. The operative portion of the order reads as follows:-

> *8. The legal issue as to whether a Writ Court can injunct or quash a summon is no longer res*

*intagra and the same has been decided by the Hon'ble Supreme Court in the case of Commissioner of Customs, Calcutta, vs. MM Exports, reported in (2007) 212 ELT 165, wherein, it was held that High Court should not interfere at the stage when the department issues summons except in exceptional cases and it is always open to the personal summon to raise all contentions appearing before the department in person or through authorised representative. Therefore, by applying the challenge to the summon has to necessarily fail.*

*9. One more decision of the Hon'ble Supreme Court is in the case of Union of India Vss Rajnish Kumar, Tuli, in Special Leave Criminal Appeal No(s).30/2010. In the said case, the appeal arose out of the order passed by a Punjab and Haryana High Court, directing the concerned officers of the Directorate of Revenue Intelligence to examine and record the evidence of the respondent therein at their office at Ludhiana. A case was registered by the Ahamedabad Zonal Unit, DRI, on the allegation of misuse of advance licence scheme and summons were issued under Section 108 of the Customs Act, 1962. The Honourable Supreme Court took note of the decision in the case of Dukhishiyam Benupani, Asstt. Director, Enforcement Directorate (FERA) Vs. Arun Kumar Bajoria reported in (1998) 1 SCC 52 and held that the learned single Judge of the Punjab and Haryana High Court has passed the order without properly appreciating the decision of the Hon'ble*

*Supreme Court in the case of Arun Kumar Bajoria (supra). Ultimately, the appeal filed by the Union of India was allowed, leaving it open to the Directorate of Revenue Intelligence to issue appropriate summons to the respondent for his appearance at an appropriate place. By applying the law laid down in the aforementioned Supreme Court's decision, the only conclusion that can be arrived at by this Court is to held that a Writ Petition challenging a summon, is not maintainable.*

*12. In the light of the above conclusion, this Court, based on the legal position feels that it would be unnecessary for this Court to go into the factual aspects. Hence, for all the above reasons, the Writ Petition is held to be not maintainable and the same is dismissed. The respondents are free to issue of fresh summons setting out the reasons for which the petitioner is to be summoned before the second respondent by invoking its power under Section 108 of the Customs Act, 1962 and proceed in accordance with law.*

3. Pursuant to the direction issued in the earlier Writ Petition, the impugned summons has been issued to the petitioner stating that he is required to appear and produce the following documents for the period from 2013-14 to 2016-17.

(i).Copy of the Bill of Entry;

(ii).Copy of the Invoice;

(iii).Copy of the packing list;

(iv).Copy of the Bill of Lading;

(v).Copy of Insurance;

(vi).Chartered Engineer's Certificate;

(vii).Proforma invoice raised by overseas supplier;

(viii).Sales contract entered into with overseas supplier.

4. In these Writ Petitions, the petitioners have not challenged the summons issued by the second respondent, as they are aware that this Court had already rejected a challenge by the petitioner to an earlier summons issued by the second respondent. Therefore, the petitioner appears to have differently couched the prayer sought for in the Writ Petition to forbear the second respondent from proceeding with the enquiry pursuant to the summons dated 06.11.2017. Thus, essentially, the petitioner challenges the summons issued by the second respondent and a second Writ Petition for such a relief, is not maintainable after the petitioner was unsuccessful in the first round of litigation, when the Writ Petition was dismissed, as not maintainable, with the further direction to the second respondent to issue fresh summons setting out reasons, which have been done by the second respondent in the summons, dated 06.11.2017. This is sufficient to

hold that the Writ Petitions are not maintainable and liable to be dismissed.

5. The learned Senior counsel appearing for the petitioner would contend that while it may be true that summons cannot be quashed, but in the instant case, the petitioners have challenged the jurisdiction of the second respondent to summon the petitioners. In support of such contention, reliance was placed on the decision of the Hon'ble Supreme Court in the case of ***UOI vs. Ram Narain Bishwanth & Ors., (1998) 9 SCC 285***, and the decision of the Hon'ble Division Bench of the Karnataka High Court in the case of ***Devilog Systems India vs. Collector of Customs, Bangalore, 1995 (76) ELT 520, (Kar).*** It is submitted that the second respondent, who does not have jurisdiction to summons the petitioner should be prohibited from doing so by issuing a Writ of Mandamus.



6. The learned Senior Standing counsel for the respondent would contend that the decisions relied on by the petitioner are distinguishable, since it related to authorities, who functioned under the Customs Act and DRI is an investigating agency having all India jurisdiction vide notification No.17/2002. It is submitted that the

summons, dated 06.11.2017, was issued by complying with the direction issued by this Court in the earlier Writ Petition and the presence of the petitioners along with the documents is essential for proceeding with the investigation. Further, it is submitted that the past transactions are to be investigated and the second respondent has sufficient jurisdiction to investigate the past transactions and the Senior Intelligence Officer has been given the status of a Gazetted Officer and is entitled to send notice under Section 108 of the Customs Act, 1962. In support of such contention, reliance was placed on the decision of the Division Bench of this Court in the case of ***South India Exports vs. Joint Director of Foreign Trade 2004 (177) ELT 57 (Mad)***.

7. In reply, the learned Senior counsel appearing for the petitioner referred to Section 5 of the Customs Act and submitted that the Senior Intelligence Officer is lower in rank than the Assistant Director and in such circumstances, he would have no jurisdiction to summon the petitioners.



8. Heard Mr.B.Kumar, learned Senior counsel appearing for Mr.R.Sivakumar, learned counsel appearing for the petitioner and

Mr.V.Sundareswaran, learned Senior Standing counsel appearing for the respondent.

9. Though the petitioners seek for issuance of a Writ of Mandamus to prohibit the second respondent from proceeding with the enquiry pursuant to the summons dated 06.11.2017, it is an indirect challenge to the summons. The petitioner having been unsuccessful in its earlier attempt, cannot now maintain these Writ Petitions and indirectly challenged the summons issued by the second respondent. Therefore, the petitioner is estopped from approaching this Court for an identical relief for the second time. Nevertheless, the petitioner has challenged the jurisdiction of the second respondent and this challenge is based on the decision of the Hon'ble Supreme Court in ***Ram Narain Bishwanth & Ors.,***(supra) and in that of the Karnataka High Court in ***Devilog Systems India*** (supra)***.***



10.The contention advanced by the learned Senior counsel appearing for the petitioners is that the goods were imported through Chennai Port cleared by the Customs Authorities at Chennai and the second respondent being an Officer situated in Ahmadabad, would have no jurisdiction to summon the petitioners. In ***Ram Narain***

***Bishwanth & Ors.,***(supra), goods were imported by the respondent therein, which was cleared at Paradip Port in the State of Orissa, the goods were then transported to Howrah in State of West Bengal where they were seized by the Customs Authorities on the ground that they had been imported on the strength of fictitious licences. The Department held that the goods were liable for confiscation, which was challenged before the CEGAT which held that the Customs Authorities in West Bengal, had no jurisdiction to pass such an order and the appeal was disposed of by the Hon'ble Supreme Court by directing the Customs Authorities at Paradip, State of Orissa to initiate proceedings against the respondent on the ground that the goods had been imported on fictitious licences and not for the customs authorities in West Bengal to do so.

11. In ***Devilog Systems India*** (supra), one of the questions referred for consideration was whether the notices issued by the Assistant Collector of Customs, Internal Audit Department were legal and valid. In the said case, the Department conceded that for the purposes of the Section 47 of the Act, “the proper Officer” would be the Assistant Collector of Customs, Bangalore and for Section 28(1), it can be different. The Court held that in the absence of notification

dated 01.02.1963, the Audit wing at Madras was not competent to issue notice under Section 28(1) of the Act, merely because, the Madras Audit office is given the power to audit the accounts of Bangalore office. Thus, notices were held to be not issued by the proper officer attached to the jurisdictional Collectorate at Bangalore, where the goods were imported and therefore, the notices were held to be invalid.

12. As rightly pointed out by the learned Senior Standing counsel for the respondents both the decisions arose out of the proceedings under the Customs Act, where the jurisdiction of the Officer/Commissionerate was subject matter of consideration for which purpose, the Port of import was determined as the jurisdictional Commissionerate. In the instant case, the exercise done by the second respondent is investigation and it does not pertain to a single consignment imported by the petitioners. By the summons, dated 06.11.2017, the petitioners have been called upon to produce documents pertaining to the imports done for the period from 2013-14 to 2016-17. Infact, this Court in the earlier Writ Petition specifically directed that the summons should set out reasons for which the petitioner is being summoned. This has been explicitly stated with

summons dated 06.11.2017. Therefore, it is not a singular transaction, which is being investigated, but past transaction as well. This has been held to be permissible in the case of ***Commissioner of Customs (Sea), vs. CESTAT, Chennai 2009 (240) ELT 166 (Mad),*** wherein it was held that past conduct of the importer would assume significance in the course of investigation and there is power to investigate into past cases.

13. In ***Dukhishyam Benupani, Asstt. Director, Enforcement Directorate (Fera) vs. Arun Kumar Bajoria*** reported in ***(1988) 1 SCC 52,*** the Hon'ble Supreme Court considered as to whether the officials of the enforcement Directorate could be injuncted from arresting the respondent therein and it was held as follows:-

> 7.*It seems rather unusual that when the aggrieved party approached the High Court challenging the order passed by a subordinate court the High Court made the position worse for the aggrieved party. The officials of the Directorate are now injuncted by the Division Bench from arresting the respondent and the time and places for carrying out the interrogations were also fixed by the Division Bench, Such kind of supervision on the enquiry or investigation under a statute is uncalled for. We have no doubt that such type of interference would impede the even course of enquiry or investigation*

*into the serious allegations now pending. For what purpose the Division Bench made such interference with the functions of the statutory authorities, which they are bound to exercise under law, is not discernible from the order under challenge. It is not the function of the court to monitor investigation processes so long as such investigation does not transgress any provision of law. It must be left to the investigating agency to decide the venue, the timings and the questions and the manner of putting such questions to persons involved in such offences A blanket order fully insulating a person from arrest would make his interrogation a mere ritual [vide State rep by the CBI v. Anil Sharma, JT (1997) 7651]-*

14. It was argued that the notification No.17/2002-Cus.(NT), dated 07.03.2002, though confers all India jurisdiction for certain officers, the Senior Intelligence Officer is lower rank than the Assistant Director and therefore, cannot rely on notification No.17/2002. This contention is not tenable for the reason that in terms of Section 108, any Customs Officer is entitled to issue notice, which was considered by the Division Bench in the case of ***South India Exports***, (supra), wherein it was held as follows:-

*9. We will not deal with the question as to whether the officer, who sent the notice under Sec.108 of the Customs Act, could not have sent the* *same owing to his not being a Gazetted officer. A statement is made on behalf of the respondents that the concerned officer is a Gazetted officer under the notification and that statement is not seriously disputed by the other side. Even otherwise, there is no reason for us not to accept the statement made by the learned senior counsel at the Bar that all such officers, holding the post of Senior Intelligent Officer, have been given the status of the Gazetted officer. Hence that question is concluded against the appellants.*

*10. A glance at Sec.108 of the Customs Act, under which the summons is given, would suggest that it is a power given to any Gazetted officer of the Customs Department to summon any person during any enquiry which the officer would make in connection with the smuggling of any goods. A summons can be for the production of the documents or those in possession or under the control of the persons summoned and such a summoned person is bound to attend and to state the truth upon any subject respecting which he is examined by the summoning officer. These powers are given obviously with an idea to check the smuggling. The definition of 'smuggling' is to be found in Sec.2(39) of the Act, which is as under:*

*"smuggling in relation to any goods, means any act or omission which will render such goods liable to confiscation under Sec.111 or section 113" When Sec.111 is seen, it is clear that any goods brought*

*from a place outside India would be liable for confiscation provided under any of the eventualities described in clause (a) to (p). It will be enough for us to quote sub-section*

*(o), which reads as under:*

*"Sec.111. Confiscation of improperly imported goods, etc.- The following goods brought from a place outside India shall be liable to confiscation:- ... ... ...*

*(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;" It is therefore clear that a Customs Officer would have all the possible power and more particularly described under Sec.108 of the Act to summon any person obviously to enquire as to whether any goods have been smuggled or not. If, therefore, any goods are brought in India, which enjoy the exemption from the payment of customs duty on certain conditions then, the Customs Officer will have all the powers to enquire as to whether the conditions, subject to which the said duty is exempted, have been followed or not and it is obvious that, in case of the breach of those conditions, those goods will be smuggled goods. We, therefore, do not see as to how a simple summons issued under Sec.108 of the Act could be termed to be a proceeding without jurisdiction, when it is the inherent power of the every Gazetted officer*

*of the Customs Department to enquire into the matter of smuggling.*

15. Thus, for all the above reasons, the petitioners have not made out any case for grant of any relief in these Writ Petitions. In the result, the Writ Petitions fail and they are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

**07.12.2017**

pbn
Index:yes/no

To

1.Deputy Director,
Directorate of Revenue Intelligence,
Chennai Zonal Unit,
G.N.Chetty Road,
T.Nagar, Chennai – 600 017.

2.Senior Intelligence Officer,
Directorate of Revenue Intelligence
Ahmedabad Zonal Unit,
Block No.15, Magnet Corpn., Park,
Near Sola Flyover, Thaltej
Ahmedabad – 380 053.

**T.S.SIVAGNANAM, J**

pbn

**W.P.Nos.30066 & 30094 of 2017**
**and**
**W.M.P.No.32637 & 32669 of 2017**



**07.12.2017**