IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :04.07.2017

Coram:

The Hon'ble Mr.Justice T.S. SIVAGNANAM

W.P.No. 6650 of 2017
and
W.M.P.Nos.7158 & 7159 of 2017

K. Elumalai ...Petitioner

Versus

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

2. The Senior Intelligence Officer,
Directorate of Revenue Intelligence
Zonal Unit Ahmedabad,
Block No.15, Magnet Corporation Park,
Near Sola Flyover, Thaltej,
Ahmedabad - 380 059.

3. The Additional Director,
Directorate General of Revenue Intelligence,
New No. 25, Gopalakrishna Road,
T. Nagar,
Chennai - 600 017. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned summon dated 10.03.2017 in DRI/AZU/INQ-11 (INT-7) 2016/SP/3901 issued by the second respondent herein and quash the same and direct the third respondent herein to cause further investigation, if any, including recording of statements from the petitioner without insisting for any deposit of alleged short payment of duty during the investigation.

For petitioner : Mr.N.Murali Kumaran for Mr.R.Gopinath

For Respondents : Mrs.R. Hemalatha for R1
: Mr.V. Sundareswaran for RR2&3 Senior Panel Counsel

O R D E R

With the consent on either side, this writ petition itself is taken up for final disposal.

2.The petitioner has filed this Writ Petition praying for issuance of a writ of Certiorarified Mandamus to quash the summons, dated 10.03.2017 issued by the second respondent, Senior Intelligence Officer, Directorate of Revenue Intelligence, Zonal Unit, Ahmedabad.

3. The petitioner's contention is that the impugned summons is bereft of particulars and it does not mention as to what reason, the petitioner has been summoned to appear before the second respondent and it amounts to a harassment and clear case of victimization. To buttress the said submission, the learned counsel for the petitioner referred to the earlier summons dated 20.12.2016, by which, the petitioner, Thiru.K.Elumalai was directed to appear before the second respondent in person and to produce all import documents, sales invoices, account ledger, bank statements, purchase invoice etc., and all for the last five years. According to the petitioner, he appeared before the second respondent on the stated date namely, 02.01.2017 at 11.00 a.m and produced all the documents. Thereafter, the respondent in order to detain the petitioner issued another summons, dated 02.01.2017, directing him to appear on 03.01.2017 at 11.30 a.m. The petitioner alleges that he was brutally handled and sustained severe injury and subsequently took treatment in a Government Hospital, Royapettah. Therefore, it is submitted that the present attempt of the second respondent in summoning the petitioner to once again appear before him without disclosing the reason for such appearance is not sustainable.

4. The learned counsel has drawn the attention of this Court to Section 108 of the Customs Act, 1962, and in particular to Sub-Section (3) of Section 108 stating that all persons so summoned can attend either in person or by an authorized agent, as such officer may direct and therefore nothing prevents the petitioner from appearing through an authorized agent. Therefore it is submitted that the impugned summon is liable to be set aside.

5. The learned Standing counsel appearing for the respondent on the other hand would contend that writ petition challenging the summon issued under Section 108 is not maintainable and the petitioner is bound to respond to the summon and give statement, as it is required for an on going investigation and the preliminary security of the data retrieved from the hard disk recovered during the course of Panchanama from the premises of

the firm, in which, the petitioner, Mr.Elumalai, is a partner, reveals that the firm was indulging in gross under-valuation in import of printing machinery and has evaded huge amount of customs duty. Therefore, it is submitted that the order of interim stay should be vacated and the petitioner should be directed to appear before the second respondent.

6. With regard to the contention raised by the learned counsel for the petitioner that the summons does not specifically state as to for what purpose the petitioner is summoned, the learned counsel appearing for the respondent, on instructions, would submit that the second respondent will issue a fresh summon, setting out the purpose for which he has to appear in person.

7. Heard Mr.N.Murali Kumaran, learned counsel for the petitioner Mrs.R.Hemalatha, learned counsel appearing for the first respondent and Mr.V.Sundareswaran, learned Senior Panel counsel appearing the respondents No2. &3.

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.

10. It was argued by the learned counsel for the petitioner that the petitioner was manhandled when he appeared before the second respondent on 02.01.2017. However, the petitioner did not lodge any complaint with the Police nor any statement was recorded from him in the Government Hospital, where he is stated to have been admitted. Thus, in the absence of any such material, this Court cannot accept the contention raised by the petitioner.

11. One more argument put forth by the learned counsel for the petitioner is by referring to sub-section (3) of Section 108 of Customs Act. The language of the sub-section is very clear that if the Officer directs the petitioner to appear in person, then he is bound to appear in person, or if he is given an option to appear through authorised agent, he can appear through authorised agent. That alone would be a proper interpretation of sub-section (3) of Section 108.

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.

This writ petition is disposed of accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

To

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T. Nagar,
Chennai - 600 017.

+ 1 cc to M/s.Mc Gan Law Firm, Advocate,SR.46669

+ 1 cc to M/s.R.Hemalatha, Advocate,SR.47087

+ 1 cc to M/s.V.Sundareswaran, Advocate,SR.46666

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GJII(CO)
NR 10/08/2017