

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2017

<i>Date of Reserving the Order</i>	<i>Date of Pronouncing the Order</i>
01.08.2017	14.09.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.3071 & 16093 of 2017 &
W.M.P.Nos.17380 & 17381 of 2017

M/s.Media Graphics,
Rep. by its Partner, Mr.S.Varadharaj,
43-C, Langs Garden Road,
Pudupet, Chennai-600 002.

... Petitioner in
W.P.No.3071 of 2017

Shri.A.Gunasearan,

... Petitioner in
W.P.No.16093 of 2017

Vs.

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

2.The Senior Intelligence Officer,
Directorate of Revenue Intelligence,
Rupen Bungalow, Near Jain Merchant Society,
Mahalaxmi Cross Road, Paldi, Ahmedabad.

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

... Respondents
in both W.Ps.

Prayer in W.P.No.3071 of 2017 : Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, quashing the summons dated 19.12.2016 issued by the second respondent in File No.DRI/AZU/GI-02/ENQ-12(INT-7)/2016 and direct the third respondent herein to cause further investigation, if any, including recording of statements from the petitioner firm without insisting for any deposit of alleged short payment of duty during the investigation itself.

Prayer in W.P.No.16093 of 2017 : Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the second respondent culminating in the issue of summons dated 19.06.2017 from DRI File No.DRI/AZU/GI-02/Enq-18(Int-7)/2016 by the second respondent herein and quash the same.

For Petitioners : Mr.S.Murugappan
(in both WPs.)

For R1 in

W.P.No.3071 of 2017 : Mr.A.P.Srinivas

For R1 in

W.P.No.16093 of 2017 : Mr.K.Mahesh

For R2 & R3

in both W.Ps. : Mr.V.Sundareswaran

COMMON ORDER

The petitioners have filed these Writ Petitions to quash the summons issued by the second respondent, the Senior Intelligence Officer, Directorate of Revenue Intelligence (in short "DRI") dated 19.12.2016. The impugned

summons have been issued by the second respondent in exercise of his power under Section 108 of the Customs Act, 1962 (hereinafter referred to as “Act”).

2. The petitioner is a partnership firm engaged in import and trading of second-hand/used printing machinery. The petitioner had been regularly importing such machinery from various countries and after importation, the documents filed by the petitioner were examined and customs duty was levied under the provisions of the Act. The petitioner would state that the Officers of Customs, while making the assessment of the bills of entry, usually insist for Chartered Engineer's certificate and based on the certification, the value is fixed and wherever the value is enhanced, the petitioner is stated to have accepted such enhanced value and paid duty.

3. On 8th of February, 2016, the business premises of the petitioner was searched by the officials of the DRI and records, mobile phones, hard disk, drives were seized under mahazar. During December 2016, the petitioner was summoned by the second respondent to appear before him at Ahmedabad on 19.12.2016, on which date, a statement was recorded from the petitioner under Section 108 of the Act.

4. It was alleged that the petitioner has not declared the correct value for the second-hand machinery and it is alleged that the second respondent compelled the petitioner to write that the value of the machines are declared less to the extent of 10% and the differential amount to be paid to the suppliers is adjusted in the commissions due from them for enabling sale of their machinery to other countries by the petitioner firm. According to the petitioner, this statement is contrary to the factual position and there is no evidence to the said effect. Once again, on 06.01.2017, the petitioner was directed to appear before the second respondent at Ahmedabad and during the course of such hearing, the second respondent is stated to have insisted for production of fresh documents and that the petitioner should come with the details of all local purchases and sale documents.

5. The petitioner's case is that whatever documents in their possession has been thoroughly searched by the officers of the third respondent on 08.02.2016 and the petitioner firm does not have any other documents relating to import and sale of those goods. The petitioner would state that the second respondent has directed the petitioner to come for questioning once again only with payment of differential duty and the petitioner apprehended arrest at the hands of the second respondent. Under

such circumstances, the petitioner has approached this Court by way of this Writ Petition stating that the action on the part of the second respondent is not in accordance with law.

6. Mr.S.Murugappan, learned counsel appearing for the petitioners submitted that the petitioner has not challenged the first summon and had co-operated with the investigation, which in fact was not an investigation, but a coercive action in the name of investigation. The business premises of the petitioner had been thoroughly searched on 08.02.2016, by the third respondent and all the documents, computer hard disks, mobile phones etc., have been seized under mahazar and there is no other relevant document left out by the third respondent. After about six months from the date of search (i.e.) 08.02.2016, notice was issued to the petitioner to appear on 22.06.2016 for examination of the computer hard disks.

7. Subsequently, after about six months, summons dated 07.12.2016 was issued to appear on 19.12.2016. The petitioner had obeyed the summons and appeared and once again on 19.12.2016, another summon has been issued to appear on 06.01.2017 and at that stage, the petitioner has approached this Court challenging the summons.

8. Thus, the petitioner would state that when all the records have been already seized under mahazar and statement has already been recorded on two occasions, there is nothing more required to be done and the purpose of summoning the petitioner is only with a view to compel him to accept the duty liability as envisaged by the second respondent. Further, the impugned summons are vague, as the summons issued for the hearing on 19.12.2016, is identical to that of the impugned summons and for the very same purpose. Further, it is submitted that the counter affidavit filed by the respondent would infact assist the case of the petitioner, as there are contradictions in two places, particularly, in paragraph Nos.7 & 8 of the counter affidavit. In support of his contention, the learned counsel placed reliance on the decision in the case of *M.M.Telekom vs. Commissioner of Customs, Chennai* reported in **2002 (144) E.L.T. 252 (Mad.)**

9. Mr.V.Sundareswaran, learned counsel appearing for the DRI contended that the documents retrieved during the search proceedings indicated that the petitioner had declared lower value of offset printing machines before customs authority to evade customs duty. In the panchnama recorded on 08.02.2016, the partners accepted that they had mis-declared the

value of the imported offset printing machines and evaded payment of appropriate customs duty.

10. In the statement recorded from Mr.S.Varatharaj, partner on 19.12.2016, it had been stated that due to competition in the market and in order to reduce the burden of duties, they had declared lower value of the machinery. Further, it is stated that during the recording of statement on 19.12.2016, the petitioner had assured to produce details of actual value of machines in a couple of days. Therefore, he was issued summons to be present for recording statement on 06.01.2017, which he has challenged in this writ petition.

11. The present investigation is being done by DRI, Ahmedabad and all the documents and details are available in the Ahmedabad zonal unit and therefore, the case cannot be transferred to any other agency. The hard disks seized from the petitioner, were sent to the Forensic Lab, DRI, Mumbai Zonal Unit for retrieval of the data and the data so retrieved, have been scrutinized and on preliminary scrutiny, it was found that the data indicates clear evasion of customs duty by way of under valuation. The documents, which have been retrieved from the hard disks are required to be confronted to the responsible

persons of the petitioner firm and statement has to be recorded under Section 108 of the Act before issuance of show cause notice. Thus, the petitioner is required to appear before the investigating agency to enable them to take the investigation to the logical conclusion. In support of his contention, the learned standing counsel referred to the decision in the case of ***K.Elumalai vs. Commissioner of Customs and others***, in ***W.P.No.6650 of 2017***, dated 04.07.2017.

12. Heard learned counsels appearing for the parties and perused the materials placed on record.

13. The challenge in the present Writ Petitions is to summon issued under Section 108 of the Act. The petitioner does not dispute the authority or jurisdiction of the investigating agency namely, the DRI to summon the petitioner. The challenge to the impugned summons is on very limited ground stating that no useful purpose would be served by directing the petitioner to appear before the second respondent, inasmuch as, already the petitioner has appeared and statement has been recorded. Much earlier, the third respondent inspected the business premises of the petitioner and has also recorded statement and seized documents, mobile phones, computer hard

disks etc., and once again to summon the petitioner for the very same purpose is only with a view to harass the petitioner and some how make the petitioner accept that he/they has/have under valued the value of the imported goods.

14. In *Commissioner of Customs, Calcutta vs. MM Exports*, reported in **(2007) 212 ELT 165**, it was held that the High Court should not interfere at the stage when the Department issues summons except in exceptional cases, and it is always open to the person summoned to raise all contentions by appearing before the Department in person or through authorized representative.

15. In *Union of India vs. Rajnish Kumar, Thuli* in *Special Leave Criminal Appeal No.30 of 2010*, the Hon'ble Supreme Court took note of the decision in the case of *Dukhishyam Benupani, Asstt. Director, Enforcement Directorate (FERA) vs. Arun Kumar Bajoria* reported in **(1998) 1 SCC 52**, and refused to interfere with the summons issued by DRI and while allowing the appeal filed by *Union of India* (supra), left it open to the DRI to issue appropriate summons to the respondent therein for his appearance at the appropriate place.

16. Thus, the legal position being that a summon should not be interdicted by a Writ Court, especially when, the authority, who has issued summons, has jurisdiction to do so. The petitioner's apprehension is that if he is compelled to appear before the second respondent for the second time, he would be compelled to accept in writing that they have under valued the goods and therefore, the petitioner seeks for quashing the summons. The first time, the petitioner was summoned was after the search conducted on 08.02.2016, is on 22.06.2016, for examination of the hard disks. Subsequently, summons dated 07.12.2016 was issued to appear on 19.12.2016. The petitioner has appeared and his statement has been recorded under Section 108 of the Act. On the very same day, (i.e.) the date on which he appeared, before the second respondent (i.e.) on 19.12.2016, one more summon was issued (impugned summon) directing him to appear on 06.01.2017. In the counter affidavit, it has been stated that the petitioner is required to appear, as he needs to be confronted with the documents which have been retrieved from the computer hard disk. However, in the impugned summon, the relevant column which is required to be filled up to make known to the petitioner the purpose for which he is summoned, has been left blank. Therefore, strictly speaking, the petitioner was unaware for what purpose, he has been directed to appear on 06.01.2017. The purpose of the enquiry has mentioned in the pre-amble to the

impugned summons is identical to first summons (i.e.) “under valuation of printing machinery”. In the first summon, dated 07.12.2016, the petitioner was directed to produce all the documents, sales invoice, account ledger, bank statements from 2011-12 to 2016-17.

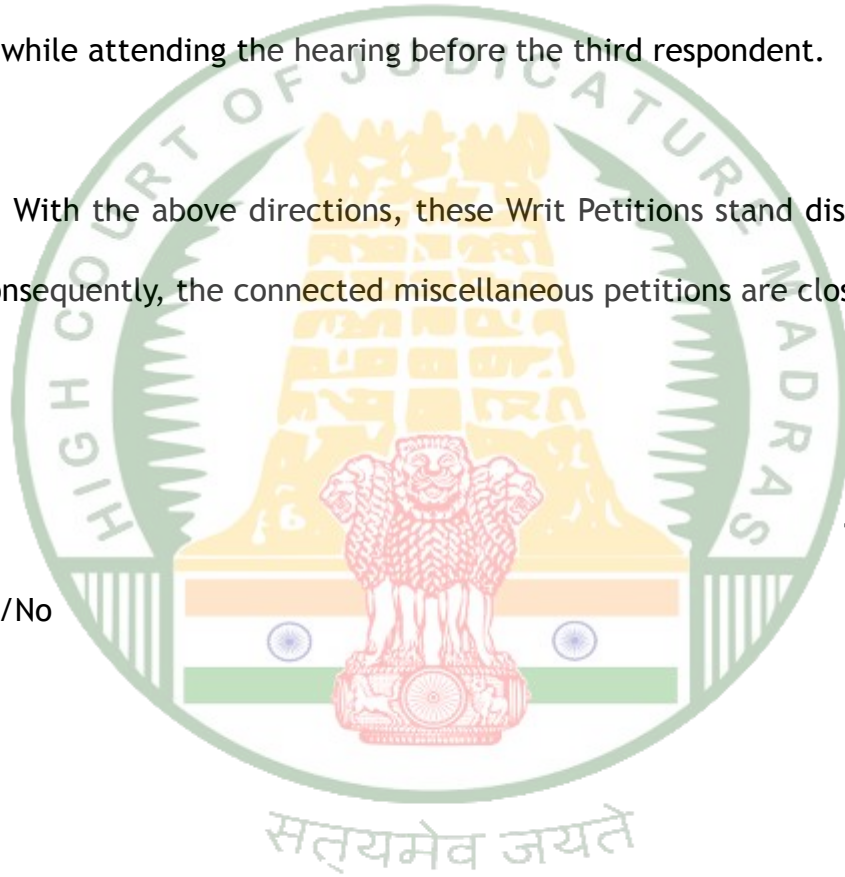
17. According to the petitioner, he has fully complied with the requirement and furnished the necessary document. However, I find that in the impugned summons, there is no direction to the petitioner to produce any documents, which is under his control. Thus, if the petitioner’s presence is required for further questioning pertaining to certain information, which they have subsequently secured, the same should have been made known in the impugned summons. However, this may not invalidate the summons by itself, but can be stated to be in violation of the principles of natural justice. As mentioned earlier, the summons cannot be quashed as no investigation can be interfered or thwarted at the very threshold. However, the petitioner is entitled to protection of his life and liberty and he is entitled to know the purpose for which he is being summoned, which has not been mentioned in the impugned summons. To that extent, this Court is inclined to grant relief to the petitioner.

18. Thus, for the above reasons, while declining to set aside the impugned summons, there will be a direction to the respondents 2 and 3 to issue fresh summons clearly indicating as to what purpose, the petitioner is being summoned and what are the documents, which he is required to produce, while attending the hearing before the third respondent.

With the above directions, these Writ Petitions stand dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

14.09.2017

Index:Yes/No
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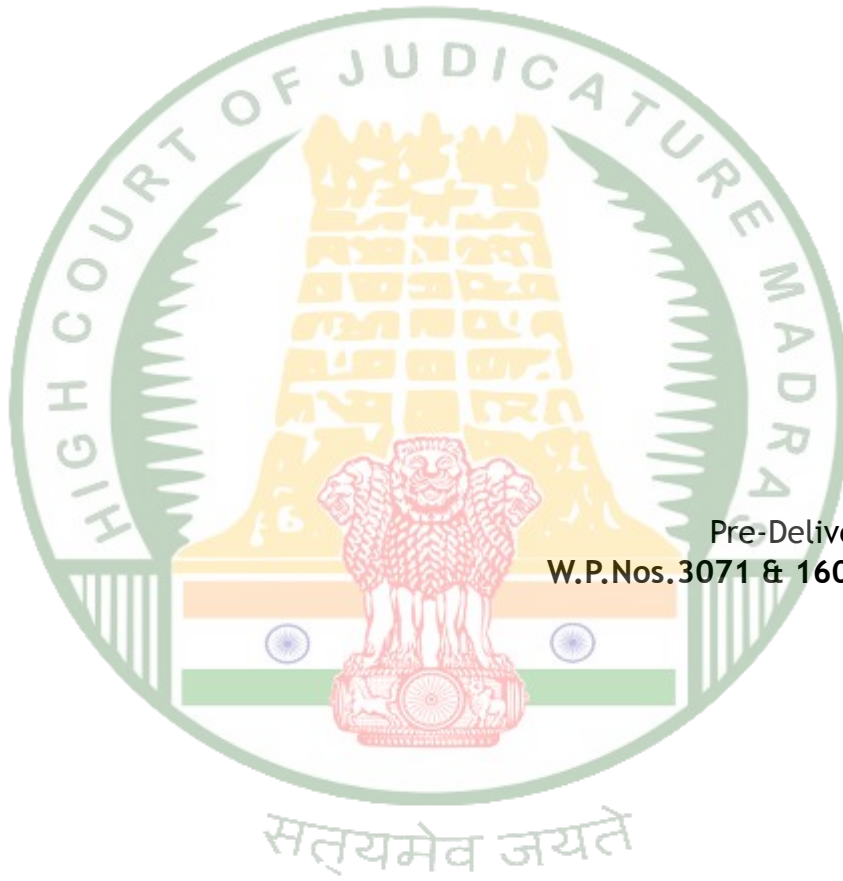
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T.S.SIVAGNANAM, J.

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Pre-Delivery Order in
W.P.Nos.3071 & 16093 of 2017

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