In the High Court of Judicature at Madras

Dated : 31.10.2017

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.24584 of 2017 & WMP.Nos.25943 & 25944 of 2017

Sarfraz Nathoo ...Petitioner
C/O.M/S.Firm Edge Plastic MFG. P. Ltd.,
Nagadevi Industrial Estate,
Bangalore.

Vs

1.The Assistant Commissioner of Customs, Revenue Recovery Unit, Office of the Commissioner of Customs, Chennai VI, No.60, Rajaji Salai, Chennai-1.

2.The Superintendent of Customs, Revenue Recovery Unit, Office of the Commissioner of Customs, Chennai VI, No.60, Rajaji Salai, Chennai-1. ...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to to call for the records of the respondents leading to issuance of communications in F.No.RRU/39/2011-DEPB dated 18.5.2017 and 02.6.2017, quash the same and further direct the respondents to furnish a copy of the Order-in-original No.7190/2008 dated 14.2.2008 passed by the Commissioner of Central Excise (Adjudication), Custom House, Chennai to enable the petitioner to pursue appropriate legal remedy.

For Petitioner : Dr.S.Krishnanandh

For Respondents : Mr.S.R.Sundar, SPC

ORDER

Heard both.

2. This writ petition has been filed by the petitioner challenging the demands dated 18.5.2017 and 02.6.2017 calling upon the petitioner to pay the arrears of customs duty, which being a sum of Rs.2,21,05,600/- within 15 days.

3. The case of the petitioner is that he was a Managing Director of a company and that he resigned from the directorship on 18.12.2003 much prior to the issuance of a show cause notice by the Joint Director, Directorate of Revenue Inteligence, Chennai dated 29.3.2004. Since he was no longer the Managing Director of the company, he did not send any reply to the said show cause notice and after about 12 years, the impugned demand has been issued in terms of the Order-in-Original dated 14.2.2008.

4. The petitioner, while stating that he is not liable to pay the amount, stated that he has not been served with the Order-in-Original dated 14.2.2008, which prevented him from availing the legal remedies under the provisions of the Statute. In this regard, a representation was sent to the second respondent on 11.7.2017. Since nothing turned out on that representation, the petitioner has approached this Court and filed the above writ petition.

5. At the time when the writ petition was entertained, this Court granted an interim order on 13.9.2017, which is to the following effect :

> "Heard the learned counsel for the petitioner.
>
> 2. The case of the petitioner is that the impugned communication dated 18.5.2017 and the consequential letter dated 02.6.2017 are illegal and unenforceable in view of the fact that the petitioner cannot be made liable for the default committed by the company, in which, he was a Managing Director and resigned from the directorship on 18.12.2003, which was accepted by the Board and Form 32 was filed before the Registrar of Companies on 21.1.2004, i.e much prior to the show cause notice dated 29.3.2004.
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> 3. It is submitted that though a copy of the show cause notice was served on the petitioner, he did not submit any reply because by then, he was no longer the Managing Director of the company. However, after about 12 years, the impugned communication dated 18.5.2017 has been sent to the petitioner calling upon him to pay a sum of Rs.2,21,05,600/- being the amount of duty payable in terms of the Order-in-Original dated 14.2.2008.

> 4. The petitioner immediately sent a representation on 26.5.2017 stating that he has got nothing to do with the affairs of the company, as he had resigned as early as 18.12.2003, which was duly accepted and that therefore, such amount cannot be demanded from him.
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> 5. However, the respondent, by communication dated 02.6.2017, reiterated the demand dated 18.5.2017. The petitioner sent another representation dated 11.7.2017 stating that he has not been served with the Order-in-Original and requested a copy of the order to be sent to him so as to avail the legal remedies open to the petitioner. However, there has been no response to the said representation dated 11.7.2017, which necessitated the petitioner to approach this Court to quash the impugned communications.
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> 6. In the light of the above facts and submissions of the learned counsel for the petitioner, this Court is of the view that the petitioner has made out a prima facie case for appropriate interim relief.
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> 7. Accordingly, there will be an order of interim injunction restraining the respondents from initiating any recovery proceedings against the petitioner pursuant to the impugned communications. Mr.S.R.Sundar, learned Senior Panel Counsel accepts notice for the respondents and seeks time to get instructions from the respondents as to whether the Order-in-Original was served on the petitioner. List on 31.10.2017."

6. Mr.S.R.Sundar, learned Senior Panel Counsel appearing for the respondents submits that a draft counter affidavit has already been prepared and forwarded to the Department for approval.

7. The learned counsel for the petitioner submits that after the interim order was granted by this Court in this writ petition, the first respondent served a copy of the Order-in-Original along with a covering letter dated 18.9.2017. Therefore, the petitioner seeks liberty to work out his remedies before the appropriate forum.

8. In the light of the subsequent development, the impugned demand shall be kept in abeyance for a period of 30 days from the date of receipt of a copy of this order. Within such time, it is open to the petitioner to file an appeal against the Order-in-Original dated 14.2.2008, which was received by the petitioner from the first respondent on 18.9.2017.

9. With the above observations, the writ petition is disposed of. No costs. Consequently, the above WMPs are closed.

RS

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1.The Assistant Commissioner of Customs,
Revenue Recovery Unit,
Office of the Commissioner of Customs, Chennai VI,
No.60, Rajaji Salai, Chennai-1.

2.The Superintendent of Customs,
Revenue Recovery Unit,
Office of the Commissioner of Customs, Chennai VI,
No.60, Rajaji Salai, Chennai-1.

+1cc to M/s S.R.Sundar, Advocate Sr.76784

WP.No.24584 of 2017
& WMP.Nos.25943 & 25944 of 2017

NRJK(CO)
RVR 29/11/2017