IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P. No.26000 of 2017
and
W.M.P. No.27583 of 2017

Mr.Rajkumar Gowthaman ... Petitioner

Vs.

Additional Director
Directorate of Revenue Intelligence
Chennai Zonal Unit
No.27, G.N.Chetty Road
T.Nagar, Chennai - 600 017. ... Respondent

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the respondent connected in F.No.DRI/CZU/TTN/VIII/48/12/INT-2015 dated 8.9.2017.

For Petitioner .. Mr.B.Kumar, Sr. Counsel, for Mr.S.Sivakumar

For Respondent .. Mr.V.Sundareswaran Senior Panel Counsel

O R D E R

Heard Mr.B.Kumar, learned Senior Counsel for the petitioner and Mr.V.Sundareswaran, learned Senior Panel Counsel for the respondent. With consent of the learned counsel for both sides, the writ petition itself is taken up for final disposal.

2.The petitioner has filed this writ petition challenging a show cause notice issued by the respondent dated 08.09.2017 under Section 124 of the Customs Act, 1962 [in short "the Act"]. The main ground on which the show cause notice is questioned is by contending that the respondent has come to a foregone conclusion that the petitioner is involved in smuggling, whereas the petitioner had no earlier opportunity to put forth their case, apart from the fact, the petitioner did not have opportunity to object to the Authority extending the period by six months under Section 110(2) of the Act.

3.This Court, on being prima facie satisfied on the submissions made by the learned Senior Counsel while entertaining the writ petition, granted a protective interim order on 05.10.2017 as follows:-

> "Heard Mr.B.Kumar, the learned Senior Counsel assisted by Mr.S.Sivakumar, the learned counsel appearing for the petitioner.
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> 2. The petitioner has impugned a show cause notice issued by the respondent, dated 08.09.2017, under Section 124 of the Customs Act, 1962 (hereinafter, referred to as 'Act'). Apart from other grounds, questioning the impugned show cause notice, the learned Senior Counsel would submit that the show cause notice is wholly without jurisdiction and illegal on account of the fact that, at the first instance, the respondent issued a show cause notice, dated 26.04.2016, in which, there were three noticees, viz., i) Shri Sithik Gani, ii) Shri A. Sheik Fareed and iii) Shri. M.Karthikeyan, and the petitioner was not a noticee in the said show cause notice, dated 26.04.2016. The respondent called upon the aforementioned three noticees, to show cause as to why i) 80 pieces of Foreign marked gold biscuits and 24 pieces of Foreign origin gold bars in crude form should not be confiscated under Sections 111 (a) (d) (e) of the Act; ii) why the packing materials should not be confiscated under Section 119 of the Act; and iii) why penalty should not be imposed on each of them under Section 112 of the Act.
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> 3. It is further submitted that, in the said show cause notice, dated 26.04.2016, in para No.16, there is a reference to name of the petitioner and a few others, stating that, they are yet to be identified, for which, investigation is in progress, and on conclusion of investigation, appropriate proceedings would be initiated against them. Further, it has been stated that the show cause notice, dated 26.4.2016 has been issued, so as to comply with statutory time limit prescribed under Section 110 of the Act. The said show cause notice was adjudicated,

and on 31.03.2017, an order was passed, by which, the gold biscuits, gold bars and the packing materials were absolutely confiscated, and the vehicle, which was involved in the offence was also ordered to be confiscated, and personal penalty was imposed on each of the aforesaid three notices.

4. It is submitted that, after the conclusion of the said proceedings, the impugned show cause notice has been issued, calling upon the petitioner to show cause as to why penalty, commensurate with the gravity of repeated offence committed by the petitioner and the other smuggling of foreign origin gold, hoodwinking the customs should not be imposed under Section 112 of the Act. It is submitted that, by virtue of the impugned show cause notice, the respondent has come to a forgone conclusion that the petitioner has involved in the smuggling, whereas, the petitioner had no earlier opportunity to putforth their case, apart from the fact that the petitioner did not have, for his better, the Authority extending the period by six months under Section 110 (2) of the Act. By way of illustration, the learned Senior Counsel submits that, in a given case, if there are four accused, and one of them is absconding, then, the case would split up for trial, and the case would be tried against three other accused, who are available, and as and when, the fourth accused is secured, trial has to commence from the initial stage, and any judgment in the interregnum delivered against the three accused cannot be put against the absconding accused. Therefore, it is submitted that the procedure adopted by the respondent, in the impugned show cause notice, is completely flawed, and the impugned show cause notice is liable to be set aside.

5. Mr. V. Sundareswaran, the learned Senior Panel Counsel, accepts notice on behalf of the respondent, and seeks time to get instructions in the matter.

6. Till the matter is heard and decided finally, no precipitative action shall be initiated against the petitioner herein, pursuant to the impugned show cause notice, dated 08.09.2017.

List the matter on 27.10.2017."

4.Subsequently, the matter was heard on 01.11.2017. On the said date, the learned Senior Counsel for the petitioner submitted that the petitioner would be satisfied if the adjudication of the impugned show cause notice is done by the adjudicating authority without any reference to the findings in the adjudication order dated 31.03.2017, which pertains to three persons. Therefore, this Court recorded the submissions and directed the learned Senior Panel Counsel for the Revenue to get instructions and passed the following order on 01.11.2017:-

" Heard Mr.B.Kumar, learned Senior Counsel for the petitioner and Mr.V.Sundareswaran, learned Standing Counsel appearing for the Revenue.

2.The petitioner is aggrieved by the impugned notice mainly on the ground that already an order of adjudication dated 31.03.2017 was passed and based on such findings, the impugned notice was issued and it would not be proper for the respondent to issue the show cause notice.

3.The learned Senior Counsel submits that if the respondent independently adjudicates the matter without reference to the findings recorded in the adjudication order dated 31.03.2017, the petitioner would be in a position to participate in the adjudication.

4.The learned Standing Counsel for the Revenue is directed to get instructions as to whether the respondent is willing to file an affidavit that he will adjudicate the impugned show cause notice without any reference in the findings the impugned notice dated 31.03.2017. It goes without saying that whatever material collected by the Revenue could be relied upon, subject to the adequate opportunity being given to the petitioner and the respondents shall not rely solely on the findings in the adjudication order dated 31.03.2017 for the purpose of imposition of penalty on the petitioner under Section 112 of the Customs Act, 1962.

> 5.The learned Standing Counsel seeks a week's time to get instructions in the matter.
>
> 6.List the matter on 08.11.2017."

5.Today, when the matter is heard, an affidavit of undertaking dated 08.11.2017 has been filed by the Joint Commissioner of Customs (Preventive), Office of the Commissioner of Customs (Preventive), Trichy, who is the adjudicating authority for the said case and paragraph no.8 of the affidavit would be relevant, which is quoted hereinbelow:-

> "8.I state that accordingly, the Joint Commissioner of Customs, Trichy do undertake to adjudicate the above said Show Cause Notice F.No.DRICZU/TTN/VIII/48/INT-2015 dated 08.09.2017 without being influenced by the findings rendered in the Order in Original No.TCP-CUSTOMS-PRV-ADC-014-17 dated 31.03.2017 but based upon the available material and statement recorded under the provisions of the Customs Act, 1962."

6.The learned counsel appearing for the petitioner, on instructions, submits that the averments set out in paragraph no.8 of the affidavit of undertaking filed by the adjudicating authority would be sufficient to safeguard the interest of the petitioner.

7.In the light of the above, the affidavit of undertaking dated 08.11.2017 filed by the adjudicating authority, is placed on record and the writ petition is disposed of with a direction to the adjudicating authority to adjudicate the show cause notice without being influenced by the findings rendered in the order-in-original dated 31.03.2017 and proceed based on the available material and the statement recorded under the provisions of the Customs Act, 1962.

8.With the above observations, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

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To

Additional Director
Directorate of Revenue Intelligence
Chennai Zonal Unit
No.27, G.N.Chetty Road
T.Nagar, Chennai - 600 017.

+ 1 cc to MR.V.Sundareswaran, Advocate sr.79173

+ 1 cc to Mr.S.Sivakumar, Advocate sr.79106

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RR 27/11/2017