

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.07.2017

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.18090 of 2017
and W.M.P.Nos.19630 & 19631 of 2017

M/s.J.K.Exim,
Represented by its Proprietor
Shri.Kalpesh B.Patel
No.11-4, 894/N, A.R.Rahaman Apartment,
Teachers Colony, Keelanatham Village,
Tirunelvel - 627 011. Petitioner

...Vs..

- 1.The Deputy Commissioner of Customs,
Docks Intelligence of Customs,
Custom House, No.60, Rajaji Salai,
Chennai - 600 001.
- 2.The Assistant Commissioner of Customs,
Docks Intelligence of Customs,
Custom House, No.60, Rajaji Salai,
Chennai - 600 001. Respondents

Prayer: Writ Petition filed under Article 226 of the
Constitution of India, praying to issue a Writ of Certiorari, to
call for the records pertaining to the impugned detention notice
in F.No.O.S.17/2009-DIU dated 17.05.2017 issued by the 1st
respondent and quash the same.

For Petitioner : Mr.C.Derrick Sam

For Respondents: Mr.G.M.Syed Nurullah Sheriff
Senior Panel Counsel

O R D E R

Heard Mr.C.Derrick Sam, learned counsel appearing for the
petitioner and Mr.G.M.Syed Nurullah Sheriff, learned Senior
Panel Counsel accepting notice on behalf of the respondents.
With the consent on either side, the writ petition itself is
taken up for disposal.

2.The petitioner has challenged a detention notice issued by the first respondent under Section 142(1)(a)&(b) of the Customs Act, 1962, by which the petitioner was informed that he has failed to pay a sum of Rs.5,00,000/- being the penalty which was confirmed vide Order-in-Original No.12516/2010 dated 30.07.2010 under Section 114(iii) of the Customs Act, 1962. The petitioner's case is that no show cause notice was received by them nor the Order-in-Original dated 30.07.2010. In this regard, the petitioner has submitted a representation dated 16.05.2017 to the first respondent, wherein they have requested for furnishing a copy of the show cause notice issued by DIU Section along with a copy of the adjudication order at the earliest. The first respondent by reply dated 30.05.2017 informed the petitioner that the copy of the show cause notice dated 11.01.2010 has already been forwarded to the petitioner and in response to the show cause notice, the petitioner by letter dated 21.04.2010 and 16.06.2010 has submitted their response. Therefore, a request for furnishing a copy of the show cause notice was declined. According to the petitioner, the reply dated 30.05.2017 does not state anything about adjudication order and a copy of which has also been requested by the petitioner in their representation dated 16.05.2017 along with a copy of the show cause notice. Further, according to the petitioner, there could not have been response given by the petitioner dated 16.06.2010 to the show cause notice dated 11.01.2010 since as on 16.06.2010, the petitioner was arrested and remanded to judicial custody.

3.In my considered view, the petitioner has confused two issues in the present challenge to the detention notice. As long as the Order-in-Original remains unassailed, the first respondent is entitled to pass the impugned detention notice to recover the amount of penalty which has attained finality vide Order-in-Original dated 30.07.2010. The second aspect is that if the petitioner is aggrieved by the Order-in-Original, then their remedy lies elsewhere and not before this Court. In any event, the first respondent has not informed the petitioner as to whether the adjudication order (Order-in-Original) dated 30.07.2010 has been communicated to the petitioner or not as the reply dated 30.05.2017 only refers to the show cause notice.

4.Therefore, while refusing to set aside the impugned detention notice and dismissing the writ petition, there will be a direction to the first respondent to send a reply to the petitioner with regard to his entitlement for a copy of the adjudication order within a period of ten days from the date of receipt of a copy of this order. On receiving such reply, the petitioner is entitled to work out their remedies in the manner known to law. Pending such proceedings, if the petitioner is

desirous of releasing the goods which have been detained pursuant to the detention notice without prejudice to the rights and contentions, the petitioner may remit the amount of Rs.5,00,000/- being the penalty imposed in the Order-in-Original dated 30.07.2010 and then proceed to question the order in the manner known to law.

5.With the above directions, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

cse
To

- 1.The Deputy Commissioner of Customs,
Docks Intelligence of Customs,
Custom House, No.60, Rajaji Salai,
Chennai - 600 001.
- 2.The Assistant Commissioner of Customs,
Docks Intelligence of Customs,
Custom House, No.60, Rajaji Salai,
Chennai - 600 001.

+lcc to Mr.G.M.Syed Nurullah Sheriff, Advocate sr.49627
+lcc to Mr.Hari Radhakrishnan, Advocate Sr.50170

सत्यमेव जयते

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srg 20/07/2017

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