IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.08.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.30782 of 2004 &
W.P.M.P.No.37286 of 2004

M/s. Shaw Wallace Co. Ltd.,
No.121, (New No.38),
Rukmini Lakshmipathy Road,
Egmore, Chennai - 600 008. ... Petitioner

Vs.

1. Union of India, Rep. by the Secretary,
   Ministry of Finance, North Block,
   New Delhi - 110 001.

2. The Deputy Commissioner of Customs,
   Manifest Clearance Department,
   Customs House, 33, Rajaji Salai,
   Chennai - 600 001.

3. Marine Container Services (South) Pvt. Ltd.,
   No.18, Swami Sivananda Salai,
   Chennai - 600 005. ... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records leading to the impugned demand of the second respondent bearing reference IGM No.124/1994 Line No.180 & 200 dated 03.08.2004 (Document No.13 in the typed set) and to quash the same.

For Petitioner : Mr.K.Bijai Sundar

For Respondents : No appearance for R1
Mr.S.R.Sundar, for R2
Senior Panel Counsel
Mr.T.K.Ram Kumar, for
M/s.Ram & Rajan Associates, for R3

O R D E R

Heard Mr.K.Bijay Sundar, learned counsel for the petitioner, Mr.S.R.Sundar, learned Senior Panel Counsel for the second respondent and Mr.T.K.Ramkumar, learned counsel appearing for the third respondent.

2.The petitioner in this writ petition seeks for issuance of writ of certiorari challenging a communication sent to the petitioner dated 03.08.2004, directing the petitioner to pay the shortlanding penalty as per the order passed earlier, which was affirmed by this Court in W.P.No.15601 of 1997 dated 07.07.2004.

3.The facts leading to the impugned notice are that the petitioner is a Steamer Agent for Foreign and Indian ship owners. The third respondent is a main line operator who will carry the goods from various destinations to Hub Port and the Hub Port in the instance case, is Singapore. From the Hub Port, the feeder line operator communicates their vessel to transfer the cargo and discharge the same in the Port of discharge. In the instant case, the main line operator is the third respondent, the Hub Port is Singapore and the feeder line operator is the petitioner herein.

4.The case of the petitioner is that two containers which were carried by the main line operator from Korea to Chennai were entrusted to the feeder line operator at Singapore and the said containers were loaded on the vessel M.V.Kota Jade V.2. The vessel arrived at Chennai Port on 22.03.1994, but even before the arrival of the vessel, the third respondent filed the import container list. The main line operator has instructed the petitioner by telex dated 22.02.1994 to reship the containers back to Singapore as per the instructions of the shippers at Seoul, Korea. This lead to a show cause notice being issued to the petitioner dated 01.12.1994, calling upon the petitioner to show cause as to why the amount of Rs.33,64,762/- should not be levied as duty for the goods not unloaded and why penalty should not be imposed under Section 116 of the Customs Act, 1962. Similar notice was also issued to the the third respondent.

5.The petitioner filed their replies dated 12.12.1994 and 30.08.1995, stating that for no fault of them, they were unable to discharge the cargo as it was solely on the instructions received from the agents concerned and requested for removing the penalty. The adjudicating Officer granted personal hearing and after considering the submissions of the petitioner as well as the third respondent, passed an order imposing penalty of Rs.33,64,762/- on the petitioner under Section 116 of the Customs Act.

6.The petitioner preferred an appeal to the Commissioner of Customs. The Commissioner of Customs (Appeals) after elaborately considering the factual and legal position, set aside the order and remanded the matter to the lower authority for denovo examination in the light of the observations contained therein and after granting an opportunity of personal hearing to the petitioner and the third respondent. As against the said order, the petitioner preferred a revision to the Central Government under Section 129 DD of the Customs Act, 1962. The revision petition was rejected by order dated 22.04.1997. The petitioner challenged those orders by filing writ petition in W.P.No. 15601 of 1997. The Writ Court elaborately heard the matter and by a detailed order dated 07.07.2004, dismissed the writ petition. After dismissal of the writ petition, the impugned communication has been sent calling upon the petitioner to pay the shortlanding penalty. This has been challenged in the present writ petition. The only ground on which the impugned communications have been challenged is by referring to Section 122 of the Customs Act, which prescribes the pecuniary jurisdiction for the officers to adjudicate the cases of confiscation and imposition of penalty.

7.Learned counsel for the petitioner would vehemently contend that the impugned communication is wholly unsustainable as the respondents have no jurisdiction to demand penalty and the contention raised by the petitioner goes to the root of the matter and therefore, the impugned communication has to be set aside. In this regard, the learned counsel referred to the order passed in the case of M/s. United Spirits Limited Vs. the Government of India and others in W.P.No.33945 of 2007 dated 22.03.2010.

8.I have heard the learned counsel appearing for the respondents on the above submissions. Firstly, the present writ petition is liable to be dismissed on the sole ground of constructive resjudicata. The petitioner had filed the earlier writ petition to set aside the order passed by the Original Authority, the Appellate Authority and the Revisional Authority, which was dismissed by order dated 07.07.2004. The findings rendered by the Writ Court binds the petitioner and the liability has attained finality. If the petitioner is of the opinion that it is the main operator who was to be made liable for penalty, it is always open to them to proceed against the main line operator for damages.

9.The petitioner has not initiated any action against the third respondent. Thus, the finding rendered by the Writ Court affirms the orders passed by the Original Authority as well as the other Appellate/Revisional Authorities, whereby the demand for shortlanding penalty has been determined. The present attempt of the petitioner is to re-open a settled issue. There is a legal presumption that when the petitioner challenges the validity of an order before the Court of law or before the statutory Appellate Authority, it is presumed that all contentions have been canvassed and the Court or the Authority having rejected the challenge a second round of challenge to the same processings is not maintainable.

10.Thus, there cannot be a piecemeal challenge especially when impugned communication is not an order, but it is only an intimation to the petitioner to pay the shortlanding charges based on an order which has attained finality. Therefore, the impugned proceedings cannot give any fresh cause of action to the petitioner. Thus, the present attempt of the petitioner is to defeat and drive the claim of the Revenue by dragging on the matter from the year 2007 onwards before this Court and much earlier before the Appellate Authorities. Thus, the present writ petition is wholly devoid of merits and not maintainable for the above reasons. The writ petition fails and the same is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

abr

To

1. The Secretary, Union of India,
   Ministry of Finance, North Block,
   New Delhi - 110 001.

2. The Deputy Commissioner of Customs,
   Manifest Clearance Department,
   Customs House, 33, Rajaji Salai,
   Chennai - 600 001.

+1 CC to Mr. Ram and Rajan, Associates, sr 57587.
+1 Cc to Mr.S.R. Sundar, advocate sr 57792.
+1 CC to Mr. Bijay Sundar, Advocate sr 57048.

W.P.No.30782 of 2004

SP(01/09/2017)