IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.08.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.36946 of 2004 &
W.P.M.P.No.44376 of 2004

S.Jayalakshmi ... Petitioner

Vs.

1.The Deputy Commissioner of Customs,
Customs Division, No.60,
Mohan Singh Street, Cuddalore - 607 003.

2.The District Collector,
Cuddalore District, Cuddalore. ... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records relating to the demand notice dated 17.11.2004 issued to the petitioner by the Deputy Commissioner of Customs, Customs Division, at No.60, Mohan Singh Street, Cuddalore - 607 003, the first respondent herein and quash the same.

For Petitioner : No Appearance
For Respondents : Mrs.Hema Muralikrishnan

O R D E R

None appears for the petitioner. This writ petition has been filed by the widow of late V.M.G.Srinivasa Vandayar, to quash the notice dated 17.11.2004, calling upon the petitioner to pay a sum of Rs.50,000/-, which was a penalty, which has to be paid by her husband pursuant to an order passed by the Department, dated 13.08.1986.

2.The impugned notice alleges that as against the said order dated 13.08.1986, no appeal is pending. Therefore, the petitioner being the legal heir of her late husband and inherits his properties should pay the money.

3.The first contention raised by the petitioner challenging the impugned proceedings is by stating that though an order was passed in the year 1986 during the life time of her husband, till his demise no steps have been taken by the respondent to recover the said amount and all of a sudden, the respondent has threatened to recover the said amount from the petitioner and issued the demand notice after a lapse of 20 years which is wholly unsustainable.

4.With regard to the legal issue, the petitioner pointed out that in terms of Section 112 of the Customs Act, 1962 the liability is personal in nature and cannot be recovered against the estate of the deceased.

5.Though the respondent has been served, no counter affidavit has been filed. The respondent has no explanation to offer why no action was taken to recover the money from the year 1986 onwards till the date when the petitioner's husband was alive (i.e.) till 2001. As long as this position remains unexplained, it has to be necessarily taken that the claim is time barred and now cannot be enforced as against the legal heirs of the deceased.

6.That apart, if proceedings are to be initiated against the petitioner, then liability should have been fixed on the petitioner, for which proper procedure was required to be followed, more so, when it is the case of the Department that the petitioner is liable in terms of Section 112 of the Customs Act. Thus, the present attempt of the first respondent to make good the loss of Revenue after the demise of the petitioner's husband cannot be permitted.

7.Accordingly, this writ petition is allowed and the impugned order is quashed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

abr

To

1.The Deputy Commissioner of Customs,
Customs Division, No.60,
Mohan Singh Street, Cuddalore - 607 003.

2.The District Collector,
Cuddalore District, Cuddalore.

W.P.No.36946 of 2004

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