

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2017

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

W.P. No.19150 of 2003

Charminar Export

163 Surya Narayana Chetty Street

Royapuram

Chennai 600 013

represented by its Managing Partner

Rakesh Kumar Jain

Petitioner

vs.

1 The Joint Director General of Foreign Trade
O/o the Joint Director General of Foreign Trade
38-39, Whites Road
Royapettah
Chennai 600 014

2 The Commissioner of Customs
(Sea Exports)
Customs House
Rajaji Salai
Chennai 600 001

3 The Deputy Director
Directorate of Revenue Intelligence
25, Gopala Krishna Road
T. Nagar
Chennai 600 017

4 The Senior Intelligence Officer
Directorate of Revenue Intelligence
25 Gopala Krishna Road
T. Nagar, Chennai - 600 017 Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari to call for the records of the third respondent dated 25.02.2003 in his proceedings in F.No.VIII/48/86/2002-DRI and to quash the same.

For petitioner : Mr. Velayutham Pitchiah
for Mr. Lakschmipathy

For R1 : Mr. J. Madhanagopal Rao, SCCG.,

For R2 : Mr. Pramod Kumar Chopda
Standing Counsel

For RR 3 & 4 : Mr. V. Sundareswaran
Standing Counsel

ORDER

In this writ petition, the petitioner impugns the show cause notice dated 25.02.2003 issued by the third respondent.

2 The facts of the case have been set down in paragraph nos.2.4 to 2.6 of the counter affidavit of respondents 2 to 4 which read as follows:

"2.4 The Directorate of Revenue Intelligence, Chennai was in receipt of specific intelligence that M/s. Charminar Exports imported stainless steel coils/sheets under high sea sale and illegally diverted them to other places for other purposes instead of utilising them in their factory for manufacture of export product, i.e, stainless steel utensils and that such diverted goods in huge quantity was being stored in M/s. VKN Industries, Chennai in M/s. Modern Steel Industries, Chennai, and M/s. Baburam Premchand, Chennai. Based on the intelligence, investigation was initiated in the matter.

2.5 During the course of investigation, it came to light that out of the 13 licenses obtained by the petitioner, export obligations were fulfilled in respect of 10 DEEC licenses; that out of these 10 licenses, 4 licenses were redeemed, applications were made for redemption of 2 licenses and 4 licenses were not redeemed so far; that in respect of the remaining 3 licenses, export obligation was not fulfilled in respect of two licenses bearing Nos.0410028056/4.7.2002 and 0410031501/24.9.2002 and no import was made under the license bearing no.0410033564/22.11.2002.

2.6 The investigation done by DRI, Chennai further revealed that in respect of license No.0410028056/4.7.2002, the petitioner had imported

397.28 MT of inputs duty free and in respect of license No.0410031501/24.9.2002, the petitioner had diverted a quantity of 230.597 MT of the duty free imported inputs to M/s. VKN Industries, Chennai; that out of this quantity, 88.113 MT of duty free imported inputs were physically available at the premises of M/s. VKN Industries which was seized under mahazar dated 4.12.2002; that the petitioner had diverted under two delivery notes dated 27.11.2002 a quantity of 39.780 MT of duty free imported inputs to M/s. Baburam Premchand, Chennai and the said quantity which was physically available at the premises of M/s. Baburam Prem Chand, Chennai was seized under mahazar on 5.12.2002; that the petitioner had diverted under letter/delivery note dated 22.10.2002 a quantity of 41.715 MT of duty free imported inputs to M/s. Modern Steel Industries, Chennai and out of the said quantity, 6.110 MT which was physically available at M/s. Modern Steel Industries was seized under mahazar on 5.12.2002."

3 In short, the Directorate of Revenue Intelligence commenced investigation on intelligence that there has been violation of the provisions of the Customs Act. During the course of investigation, statements of various persons were recorded under Section 108 of the Customs Act and after completing the investigation, the Directorate of Revenue Intelligence issued a notice dated 25.02.2003 to the petitioner calling upon the petitioner to show cause as to why action should not be taken against him under the provisions of the Customs Act, challenging which, the petitioner is before this Court.

4 The learned counsel for the petitioner contended that the Directorate of Revenue Intelligence has no jurisdiction to issue show cause notice and therefore, the show cause notice is bad in law.

5 The scope of judicial review of a show cause notice is indeed very limited and minimal, inasmuch as it should be shown that the officer himself does not have the jurisdiction to issue the show cause notice.

6 The issue as to whether the Directorate of Revenue Intelligence has power to issue show cause notice is no longer res integra in view of the judgment of this Court in Abishek Mundhra vs. A.D.G., D.G. of Revenue Intelligence, Chennai, 2015 (318) ELT 245 Madras.

7 Further, the jurisdiction of the Customs authorities

(who would include the Director of Revenue Intelligence) to investigate into violations of terms of advance licences, as in this case, is beyond any pale of doubt in the light of the judgment of the Supreme Court in Sheshank Sea Foods Pvt. Ltd. vs. Union of India [1996 (88) ELT 626 (SC)].

In view of the above, this writ petition is dismissed with liberty to the petitioner to work out his remedy in the manner known to law. Costs made easy.

sd/
Assistant Registrar(CS III)

/true copy/

Sub Assistant Registrar

cad
To

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+1cc to Mr.Muralikrishnan, Advocate SR.No.969
+1cc to Mr.M.Lakshmipathi, Advocate SR.No.866
+1cc to Mr.J.Madhana Gopal, Advocate SR.No.1524
+1cc to Mr.V.Sundreswaran, Advocate SR.No.982

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AD(CO)
GN(16/02/2017)