

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2018

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.3525 of 2018 &

W.M.P. No.4305 of 2018

M/s.Meena Advertisers

Rep by its Proprietor

V.Krishnamurthy

New No.66, (Old No.142)

Eldams Road, Teynampet

Chennai- 600 018

.. Petitioner

v.

1 Director General of Goods & Service Tax Intelligence
Mumbai Zonal Unit
N.T.C.House, III Floor
15 N.M.Road, Ballard Estate
Mumbai-400 001

2 The Senior Intelligence Office
DGGST Mumbai
Office of the Director General of Goods &
Service Tax Intelligence NTC House
III Floor, 15 NM Road
Ballard Estate
Mumbai

3 The Commissioner of GST & Central Excise
Chennai North Commissionerate
26/1, GST Bhavan
Uthamar Gandhi Road
Nungambakkam Chennai-600 034

4 The Superintendent of GST
Group I, Circle 6
CGST Audit-I , Commissionerate
Chennai

... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned summons dated 02.01.2018 bearing reference F.NO.DGCEI/MZU/I&IS/12(4) issued by the 2nd Respondent and quash the same and direct the 1st and 2nd Respondents to transfer the files pertaining to the petitioner's case pursuant to the aforesaid summons to the Jurisdictional Authorities/ Officers namely the 3rd respondent or the 4th Respondent or any other officer at Chennai for further proceedings in the above summons.

For Petitioner : Mr.R.Anishkumar

For Respondents : Mr.V.Sundareswaran
Senior Standing Counsel - for R1 & R2

Mr.S.R.Sundar
Senior Standing Counsel - for R3 & R4

ORDER

Heard Mr.R.Anishkumar, learned counsel for the petitioner, Mr.V.Sundareswaran, learned Senior Standing Counsel, for the respondents 1 and 2 and Mr.S.R.Sundar, learned Senior Standing Counsel for the respondents 3 and 4.

2. The petitioner is a proprietor of an Advertising Firm under the name and style of "M/s.Meena Advertisers". In this writ petition, the petitioner seeks for issuance of Writ of Certiorarified Mandamus to quash the summons dated 02.01.2018 issued by the 2nd respondent and to direct the respondents 1 and 2 to transfer the files pertaining to the petitioner's case to the Jurisdictional Authorities/Officers, viz., the respondents 3 and 4 for further proceedings.

3. The petitioner's case is largely based upon a circular issued by the Central Board on 29.07.2017 in Circular No.1056/05/2017-C.X. The learned counsel for the petitioner, by referring to para 3.2 of the Circular, submitted that as far as show cause notice issued to the assessee having Centralised registration is concerned, the jurisdictional authority in the re-organised CGST/Central Excise Commissionerate exercising control over the business location, which had taken Centralised Registration (in the previous regime), may take up the adjudication of the legacy notice irrespective of the fact that show cause notice issued to a particular location or to multiple locations covered under such Centralised registrations after his appointment as common adjudicating authority. By referring to the said condition in the circular, it is submitted by the learned counsel for the petitioner that the investigation should be shifted to Chennai.

4. The learned Standing Counsel appearing for the respondents 1 and 2 submitted that the petitioner had admitted that he was rendering taxable service before 01.07.2012 as well as after 01.07.2012 from places, such as, Chennai, Mumbai, Jaipur and Mangalore and he was remitting the service tax. Further it is submitted that the Centralized Service Tax Registration Certificate dated 12.01.2007 does not mention any place other than Chennai and in terms of Rule 4 (2) and (3) of the Service Tax Rules, 1994, the petitioner was required to

register such premises or officers from where centralised billing or centralised accounting systems were located. The learned counsel further submits that since the petitioner were doing business in Mumbai and also issuing invoices from their Mumbai office, which was not mentioned in their Centralised Registration Certificate as Service Tax, it is imperative on the part of the respondents 1 and 2 to conduct investigation to safeguard the interest of Government Revenue. The learned counsel also referred to various other circulars in support of his contentions, which empowered the respondents 1 and 2 to conduct the investigation.

5. In the aforesaid factual background, the prayer sought for by the petitioner cannot be granted. It is settled position that summons cannot be quashed or injunctioned and this court in the case of Commissioner of Customs, Calcutta v. M.M.Exports reported in 2007 (212) E.L.T.165 (S.C.) held that the writ petition was not maintainable to quash the summons and dismissed the writ petition. Similar issue was considered in W.P.Nos.30066 & 30094 of 2017, dated 07.01.2017 and the writ petitions challenging the summons issued by the Directorate of Revenue Intelligence was dismissed. The operative portion of the order reads as follows:-

"9. Though the petitioners seek for issuance of a Writ of Mandamus to prohibit the second respondent from proceeding with the enquiry pursuant to the summons dated 06.11.2017, it is an indirect challenge to the summons. The petitioner having been unsuccessful in its earlier attempt, cannot now maintain these Writ Petitions and indirectly challenged the summons issued by the second respondent. Therefore, the petitioner is estopped from approaching this Court for an identical relief for the second time. Nevertheless, the petitioner has challenged the jurisdiction of the second respondent and this challenge is based on the decision of the Hon'ble Supreme Court in Ram Narain Bishwanth & Ors., (supra) and in that of the Karnataka High Court in Devilog Systems India (supra).

10. The contention advanced by the learned Senior counsel appearing for the petitioners is that the goods were imported through Chennai Port cleared by the Customs Authorities at Chennai and the second respondent being an Officer situated in Ahmadabad, would have no jurisdiction to summon the petitioners. In Ram Narain Bishwanth & Ors., (supra), goods were imported by the respondent therein, which was cleared at Paradip Port in the State of Orissa, the goods were then transported to Howrah in State of West Bengal where they were seized by the Customs Authorities on the ground that they had been imported

on the strength of fictitious licences. The Department held that the goods were liable for confiscation, which was challenged before the CEGAT which held that the Customs Authorities in West Bengal, had no jurisdiction to pass such an order and the appeal was disposed of by the Hon'ble Supreme Court by directing the Customs Authorities at Paradip, State of Orissa to initiate proceedings against the respondent on the ground that the goods had been imported on fictitious licences and not for the customs authorities in West Bengal to do so.

11. In *Devilog Systems India (supra)*, one of the questions referred for consideration was whether the notices issued by the Assistant Collector of Customs, Internal Audit Department were legal and valid. In the said case, the Department conceded that for the purposes of the Section 47 of the Act, "the proper Officer" would be the Assistant Collector of Customs, Bangalore and for Section 28(1), it can be different. The Court held that in the absence of notification dated 01.02.1963, the Audit wing at Madras was not competent to issue notice under Section 28(1) of the Act, merely because, the Madras Audit office is given the power to audit the accounts of Bangalore office. Thus, notices were held to be not issued by the proper officer attached to the jurisdictional Collectorate at Bangalore, where the goods were imported and therefore, the notices were held to be invalid.

12. As rightly pointed out by the learned Senior Standing counsel for the respondents both the decisions arose out of the proceedings under the Customs Act, where the jurisdiction of the Officer/Commissionerate was subject matter of consideration for which purpose, the Port of import was determined as the jurisdictional Commissionerate. In the instant case, the exercise done by the second respondent is investigation and it does not pertain to a single consignment imported by the petitioners. By the summons, dated 06.11.2017, the petitioners have been called upon to produce documents pertaining to the imports done for the period from 2013-14 to 2016-17. Infact, this Court in the earlier Writ Petition specifically directed that the summons should set out reasons for which the petitioner is being summoned. This has been explicitly stated with summons dated 06.11.2017. Therefore, it is not a singular transaction, which is being investigated, but past transaction as well. This has been held to be permissible in the case of Commissioner of Customs

(Sea), vs. CESTAT, Chennai 2009 (240) ELT 166 (Mad), wherein it was held that past conduct of the importer would assume significance in the course of investigation and there is power to investigate into past cases.

13. In *Dukhishyam Benupani, Asstt. Director, Enforcement Directorate (Fera) vs. Arun Kumar Bajoria* reported in (1988) 1 SCC 52, the Hon'ble Supreme Court considered as to whether the officials of the enforcement Directorate could be enjoined from arresting the respondent therein and it was held as follows:-

7. It seems rather unusual that when the aggrieved party approached the High Court challenging the order passed by a subordinate court the High Court made the position worse for the aggrieved party. The officials of the Directorate are now enjoined by the Division Bench from arresting the respondent and the time and places for carrying out the interrogations were also fixed by the Division Bench. Such kind of supervision on the enquiry or investigation under a statute is uncalled for. We have no doubt that such type of interference would impede the even course of enquiry or investigation into the serious allegations now pending. For what purpose the Division Bench made such interference with the functions of the statutory authorities, which they are bound to exercise under law, is not discernible from the order under challenge. It is not the function of the court to monitor investigation processes so long as such investigation does not transgress any provision of law. It must be left to the investigating agency to decide the venue, the timings and the questions and the manner of putting such questions to persons involved in such offences. A blanket order fully insulating a person from arrest would make his interrogation a mere ritual [vide *State rep by the CBI v. Anil Sharma, JT (1997) 7651*]-

14. It was argued that the notification No.17/2002-Cus.(NT), dated 07.03.2002, though confers all India jurisdiction for certain officers, the Senior Intelligence Officer is lower rank than the

Assistant Director and therefore, cannot rely on notification No.17/2002. This contention is not tenable for the reason that in terms of Section 108, any Customs Officer is entitled to issue notice, which was considered by the Division Bench in the case of South India Exports, (supra), wherein it was held as follows:-

9. We will not deal with the question as to whether the officer, who sent the notice under Sec.108 of the Customs Act, could not have sent the same owing to his not being a Gazetted officer. A statement is made on behalf of the respondents that the concerned officer is a Gazetted officer under the notification and that statement is not seriously disputed by the other side. Even otherwise, there is no reason for us not to accept the statement made by the learned senior counsel at the Bar that all such officers, holding the post of Senior Intelligent Officer, have been given the status of the Gazetted officer. Hence that question is concluded against the appellants.

10. A glance at Sec.108 of the Customs Act, under which the summons is given, would suggest that it is a power given to any Gazetted officer of the Customs Department to summon any person during any enquiry which the officer would make in connection with the smuggling of any goods. A summons can be for the production of the documents or those in possession or under the control of the persons summoned and such a summoned person is bound to attend and to state the truth upon any subject respecting which he is examined by the summoning officer. These powers are given obviously with an idea to check the smuggling. The definition of 'smuggling' is to be found in Sec.2(39) of the Act, which is as under:

"smuggling in relation to any goods, means any act or omission which will render such goods liable to confiscation under Sec.111 or section 113" When Sec.111 is seen, it is clear that any goods brought from a place outside India would be liable for confiscation provided under any of the eventualities described in clause (a) to (p). It will be enough for us to quote sub-section

"Sec.111. Confiscation of improperly imported goods, etc.- The following goods brought from a place outside India shall be liable to confiscation:-

(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;" It is therefore clear that a Customs Officer would have all the possible power and more particularly described under Sec.108 of the Act to summon any person obviously to enquire as to whether any goods have been smuggled or not. If, therefore, any goods are brought in India, which enjoy the exemption from the payment of customs duty on certain conditions then, the Customs Officer will have all the powers to enquire as to whether the conditions, subject to which the said duty is exempted, have been followed or not and it is obvious that, in case of the breach of those conditions, those goods will be smuggled goods. We, therefore, do not see as to how a simple summons issued under Sec.108 of the Act could be termed to be a proceeding without jurisdiction, when it is the inherent power of the every Gazetted officer of the Customs Department to enquire into the matter of smuggling.

6. By applying the above decision to the facts of this case, the only conclusion that has to be arrived at is to dismiss the writ petition. The respondents 1 and 2 have categorically stated that investigation is being carried out and the petitioner was carrying on business in Mumbai and in the Centralised Registration Certificate the Mumbai office was not registered. Further more, the Circular referred by the petitioner does not make it mandatory for investigation to be transferred to a different location. In any event, it is for the investigating authority to take a decision in the matter and it is not for the court under Article 226 of the Constitution of India to issue such a direction in this regard, especially, when the factual matrix appears to be that the petitioner was carrying on business within the jurisdiction of the respondents 1 and 2. Hence, the prayer sought for by the petitioner cannot be granted.

7. In the result, the writ petition is dismissed and the respondents 1 and 2 are directed to issue fresh summons

clearly indicating as to what are all the documents or materials that the petitioner should produce. On receipt of the summons, it is open to the petitioner to appear before the respondents 1 and 2 through his authorised representative. Unless it is absolutely necessary for the petitioners, to appear in person, the respondents 1 and 2 may consider the case and carry on the investigation with the authorised representative. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/--

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

Rj
To

- 1 Director General of Goods & Service Tax Intelligence
Mumbai Zonal Unit
N.T.C.House, III Floor
15 N.M.Road, Ballard Estate
Mumbai-400 001
- 2 The Senior Intelligence Office
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- 3 The Commissioner of GST & Central Excise
Chennai North Commissionerate
26/1, GST Bhavan
Uthamar Gandhi Road
Nungambakkam Chennai-600 034
- 4 The Superintendent of GST
Group I, Circle 6
CGST Audit-I , Commissionerate
Chennai

+1cc to Mr.V.Sundareswaran, Advocate Sr.No.27185
+1cc to Mr.S.R.Sundar, Advocate Sr.No.27337
+1cc to M/s.R.Anish Kumar, Advocate Sr.No.27201

GP(CO)
sm:27.4.2018

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