IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.01.2018

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition Nos.765 and 1114 of 2018
and
W.M.P.Nos.929 to 931, and 1381 of 2018

M/s. Isha Exim
rep. by its Proprietor,
Shri Prabal Kumar Kundu. ...Petitioner in both W.Ps

Vs.

1. The Additional Director General,
Directorate of Revenue Intelligence,
G.N. Chetty Road, T.Nagar,
Chennai - 600 017.

2. The Senior Intelligence Officer,
Directorate of Revenue Intelligence,
G.N. Chetty Road, T.Nagar,
Chennai - 600 017.

3. The Commissioner of Customs,
Chennai - II, Commissionerate,
Customs House, No.60, Rajaji Salai,
Chennai - 600 001.

4. The Deputy Commissioner of Customs,
Group -I,
Customs House, No.60, Rajaji Salai,
Chennai - 600 001.

...Respondents 1 to 4 in both W.Ps

Prayer in W.P.No.765 of 2018

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for records of the first and second respondents leading to drawal of Mahazar,dated 18.12.2017 and detentionof the goods imported vide Bill of Entry, No.4146612, dated 25.11.2017, and to quash the same, as being contrary to the Advance Ruling No.AAR/44/Cus/02/2017, dated 31.03.2017, in terms of Section 281 of the Customs Act, 1962.

Prayer in W.P.No.1114 of 2018

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for records of the second respondent leading to issuance of seizure memorandum, dated 11.01.2018, in F.No.DRI/CZU/VIII/26/153/2017, and seizure of the goods imported, vide Bill of Entry No.4146612, dated 25.11.2017, and to quash the same, as being contrary to the Advance Ruling No.AAR/44/Cus/02/2017, dated 31.03.2017, in terms of Section 281 of the Customs Act, 1962 read with Section 110 of the Act 1962.

For Petitioner : Dr. S. Krishnanandh

For Respondents 1 &2 : Mr.V. Sundareswaran
Senior Standing Counsel

For Respondents 3 and 4: Mr. B.Rabu Manohar
Senior Panel Counsel

COMMON ORDER

Heard Dr. S. Krishnanandh, the learned counsel appearing for the petitioner, Mr.V.Sundareswaran, the learned Senior Standing Counsel, accepting notice on behalf of respondents 1 and 2 and Mr.B.Rabu Manohar, the learned Senior Panel Counsel, accepting notice on behalf of respondents 3 and 4. Since the issue involved in both Writ Petitions and the parties are one and the same, with consent on either side, both the Writ Petitions are taken up for disposal.

2. Writ Petition No.765 of 2018, has been filed, seeking for issuance of a writ of certiorari, to quash the drawal of Mahazar, dated 18.12.2017 and detention of the goods imported, vide Bill of Entry, No.4146612, dated 25.11.2017, as being contrary to the Advance Ruling, dated 31.03.2017.

3. The other Writ Petition, i.e. W.P.No.1114 of 2018 has been filed, seeking to quash the order passed by the second respondent, which is a seizure memorandum, dated 11.01.2018, where, the goods imported by the petitioner have been seized on the alleged grounds of misdeclaration, resulting in a wrong classification of the goods, under the Customs Tariff Act, 1975.

4. The petitioner imported 27,000 kgs of goods, classified as 'unflavoured supari' from Indonesia, vide Commercial Invoice, dated 20.07.2017, at US dollar 48600. The goods arrived at Chennai Port, and the petitioner filed a Bill of Entry, No.0945982, dated 28.07.2017, for clearance of the aforesaid goods. The goods were assessed to duty and out of charge was

accorded in respect of the said Bill of Entry, under Customs Tariff Heading (CTH) 21069030 as 'unflavoured supari'. However, the Officers of the Directorate of Revenue Intelligence (for short, D.R.I.) did not permit the cargo to be cleared, inspite of order of out of charge. The petitioner is stated to have paid applicable duties, vide Chellan, dated 09.08.2017. The Officers of the D.R.I. alleged that the petitioner mis-classified the goods and conducted examination of the goods and also recorded the statements, vide Mahazar, dated 10.08.2017.

5. The petitioner's case rests upon the Advance Ruling obtained by them from the Authority for Advance Ruling under the Central Excise, Customs and Service Tax, dated 31.03.2017, wherein, the Authority, after considering the objections of the Commissioner of Customs (Chennai -II), held that the goods, viz., 'unflavoured supari', 'flavoured supari', 'API supari' and chikni supari', being processed betelnut products, which do not contain specified ingredients, viz., lime, katha and tobacco but containing other flavouring material/additives are classifiable under Customs Tariff Heading 2106 90 30. Be it noted that, when the Advance Ruling Authority called for remarks from the Commissioner of Customs, Chennai -II, vide letters, dated 13.05.2016 and 29.09.2016, the Commissioner of Customs, sent a reply on 25.10.2016, stating that, the products, viz., the betel nuts imported by the petitioner should ordinarily be covered under CTH 2106 90 30, classified as 'supari'. Therefore, the Commissioner of Customs, stated that, the query raised by the petitioner before the Advance Ruling Authority may be answered in the affirmative that the products shall be covered under Chapter 21 and not under Chapter 8 of the Customs Tariff Act. In spite of the petitioner, being armed with the order passed by the Advance Ruling Authority, the consignment imported by the petitioner has been detained, Mahazar has been recorded and subsequently, the impugned seizure memorandum has been issued.

6. It has to be considered as to whether the Officers of the D.R.I., especially, in the rank of the Senior Intelligence Officer can act against the Advance Ruling issued by the Advance Ruling Authority.

7. The learned Senior Standing Counsel for the Revenue would contend that the Department is in the process of challenging the Ruling passed by the Advance Ruling Authority, dated 31.03.2017, and therefore, the learned Senior Standing Counsel submits that, there are certain reservations for the Department to adopt such Ruling.

8. The above submission on behalf of the Revenue is liable to be rejected for more than one reasons. Firstly, the competent Authority, viz., the Commissioner of Customs, Chennai

-II, has, in no uncertain terms, stated that the products imported by the petitioner are covered under Chapter 21 and not under Chapter 8 of the Customs Tariff Act, in his reply to the Advance Ruling Authority, dated 25.10.2016. Therefore, the respondents, especially, the Senior Intelligence Officer (second respondent) cannot take a stand, contrary to what has been taken by the Commissioner of Customs, Chennai - II, before the Advance Ruling Authority. That apart, the Advance Ruling Authority has ruled in favour of the petitioner and the appropriate classification has been held to be CTH 2106 90 30. In such circumstances, it has to be seen as to whether the impugned proceedings are justified or not.

9. The Government of India, Ministry of Finance (Department of Revenue), Authority of Advance Rulings, Customs and Central Excise, has issued a circular, which sets out a scheme of Advance Ruling and the matters incidental and connected therewith. The benefits of obtaining the Advance Ruling has been explained, apart from other things to state that, seeking an Advance Ruling is an inexpensive benefit and the procedure is simple and expeditious. The question, on which, Advance Ruling could be sought for, includes, i) classification of any goods under the Customs Tariff Act, 1975, ii) Applicability of notification issued under sub-section (1) of section 25 of the Customs Act, bearing on the rate of duty. So far as the binding nature of the Advance Ruling is concerned, it has been held that the Advance Ruling pronounced by the Authority would be binding on the applicant, who sought it, in respect of the question raised in the application, and on the Commissioner of Customs, Central Excise and Service Tax, as the case may be and the Authorities, subordinate to him, in respect of the applicant, unless, there is a change in law or facts on the basis, of which, the Advance Ruling has been pronounced.

10. The Hon'ble Supreme Court, in the case of Columbia Sportweare Co. Vs. Director of Income Tax, Bangalore, reported in [(2012) 283 E.L.T. 321 (S.C.)] has held that, the determination of the Advance Ruling Authority is not just advisory, but binding. Thus, the respondents cannot take a stand contrary to the Advance Ruling given to the petitioner, vide order, dated 31.03.2017. The contention that, the Department is in the process of challenging the same, is not borne out by any records, and even assuming that, there is a proposed challenge, unless, there is stay/injunction granted by the Competent forum, before which, the Advance Ruling passed by the Authority for Advance Ruling is challenged, the same continues to bind the applicant (petitioner in this case) as well as Officers functioning under the respondents. The interpretation sought to be given by the respondents, in the impugned Seizure Memorandum, is clearly contrary to the finding rendered by the Advance Ruling Authority. I find that the

respondent has invoked Section 110 (1) of the Customs Act for seizing the goods. Section 110 (1) of the Act deals seizure of goods, documents and things. Sub-Section (1) of Section 110 states that, if the proper Officer has reasons to believe that, any goods are liable to confiscation under the Customs Act, he may seize such goods.

11. Thus, the primordial requirement before an order of seizure is passed is that, the proper Officer has to have reason to believe that the goods are liable to confiscation. I find that, no such reasons are explicit in the impugned seizure memorandum, dated 11.01.2018, except, to rely upon a report stated to have been obtained from M/s. Arecanut Research and Development Foundations, Mangalore, which appears to be a private Organization, and not a accredited Laboratory by the Central Government. Thus, without recording the reasons that the goods are liable for confiscation, the second respondent could not have passed the impugned seizure memorandum.

12. The Hon'ble Division Bench of High Court of Delhi, in the case of Worldline Tradex Pvt. Ltd., Vs. Commissioner of Customs (Import) reported in [(2016) 340 E.L.T. 174 (Delhi), considered the scope of Section 110 of the Customs Act, and held that the power of seizure under Section 110 of the Act has to obviously, be exercised for valid reasons. The proper officer has to record his reasons to believe that the goods, that he proposes to seize, are liable to confiscation. The said reasons for exercise of the power have to be recorded, prior to the seizure.

13. In the instant case, the seizure memorandum of the second respondent only refers to the test report of the Private Organisation and not a Central Laboratory to state that the correct classification of goods is CTH No.08028090. Thus, the finding of the second respondent, though prima facie in nature, is clearly contrary to the order/Ruling passed by the Advance Ruling Authority, dated 31.03.2017 as well as the stand by the Commissioner of Customs, in his reply to the Advance Ruing Authority, dated 25.10.2016. Thus, the impugned seizure memorandum and the detention of the cargo by the respondents is wholly unjustified.

14. For the above reasons, the impugned seizure memorandum, dated 11.01.2018 is quashed and the respondents are directed to release the cargo in question, forthwith, on production of a copy of this order, as the petitioner has already paid the duty, vide chellan, dated 09.08.2017.

15. The learned counsel appearing for the petitioner submitted that, since the goods were detained at the instance of the D.R.I., they are entitled for Demurrage and Detention

Certificate for waiver of the warehousing and demurrages from the date of detention till the date of release of the goods. It is pointed out that, on an earlier occasion, the petitioner has approached this Court, by way of W.P.No.22114 of 2017, seeking for release of the same product, which was imported vide Bill of Entry No.2696680, dated 02.08.2017 and detained vide Mahazar, dated 10.08.2017. The said Writ Petition was disposed of, by this Court, by order, dated 12.09.2017, directing the Authority to provisionally assess the Bill of Entry and release the goods and a direction was issued to the Commissioner of Customs to issue Detention Certificate. It appears that, though the Detention and Demurrage Certificate was issued, yet, the Steamer Agent did not honour the certificate and the petitioner has paid demurrages and container detention charges, without prejudice to their rights to contest the same in other legal proceedings.

16. It is not known, as to why, action was not initiated against the Steamer Agent for not complying with the order qua certificate passed/issued by the Customs Department, and therefore, this Court is inclined to observe that the Customs Department should also ensure that whether the Detention Certificate issued for waiver of the warehousing and demurrages has been complied with in letter and spirit and should not be reduced into a paper order. In the decision rendered by the Hon'ble Division Bench of High Court of Delhi, in the case of Worldline Tradex Pvt (supra), it was held that D.R.I was responsible to bear the charges.

17. Considering the facts of the present case, the respondents 2 to 4 are directed to issue Demurrage and Detention Certificate for Waiver of Warehousing, Demurrage and Container Charges and ensure that such order is complied with by the Steamer Agent and Container Terminal, as it was held by the High Court of Delhi, in the case of Worldline Tradex Pvt (supra) that, detention having occurred due to illegal action of D.R.I., they have to bear responsibility in that regard.

18. In the result, W.P.No.765 of 2018 is disposed of and W.P. No.1114 of 2018 is allowed on the aforesaid terms. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

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

True Copy

Sub-Assistant Registrar

To

1. The Additional Director General,
   Directorate of Revenue Intelligence,
   G.N. Chetty Road, T.Nagar,
   Chennai - 600 017.

2. The Senior Intelligence Officer,
   Directorate of Revenue Intelligence,
   G.N. Chetty Road, T.Nagar,
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3. The Commissioner of Customs,
   Chennai - II, Commissionerate,
   Customs House, No.60, Rajaji Salai,
   Chennai - 600 001.

4. The Deputy Commissioner of Customs,
   Group -I,
   Customs House, No.60, Rajaji Salai,
   Chennai - 600 001.

+2 CCs to Mr.B. Sathish Sundar, Advocate sr 4125.
+2 Ccs to Mr.V. Sundareswaran, Advocate sr 4322,4321.
+1 CC to Mr.R. Babu Manohar, advocate sr 3786.

Writ Petition Nos.765 and 1114 of 2018

NMI(CO)
SP(23/01/2018)