IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 21.06.2018

Judgment Pronounced on : 11.08.2018

CORAM

THE HON'BLE MR. JUSTICE S.MANIKUMAR
and
THE HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

W.A.No.987 of 2018
and
C.M.P.No.8429 of 2018

Ravindra Kumar
... Appellant/Petitioner

vs.

1.The Commissioner of Customs (Commissionerate-III),
Customs House,
No.60, Rajaji Salai,
Chennai 600 001.

2.The Additional Commissioner of Customs, (DIU/SIIB)
Customs House,
No.60, Rajaji Salai,
Chennai 600 001.
... Respondents/Respondents

Writ Appeal filed under Clause 15 of Letters Patent praying to set aside the order of this Court pronounced on 06.04.2018 made in W.P.No.1439 of 2018.

W.P.No.1439 of 2018

Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Mandamus,Directing the respondents to remove the seal affixed at petitioners warehouse located at Godown No.G-18/12A Sathangadu Village Basin Road) Thiruvottiyur Chennai 600 019 on 26.10.2017 and for a further direction directing the respondents to return the consignments entered vide Bill of Entries as (i)Bill of Entries No.3605464 dated 13.10.2017 - (Stationery House hold articles and Cosmetics) (ii) Bill of Entry No.2498204 dated 18.07.2017 - (Decorative items) (iii)Bill of Entry No.34899207 dated 04.01.2017 - (Glass Beads and Stationary items) (iv) Bill of Landing No.GOSUNGB 1023220 dated 28.09.2017 (House hold articles and (V) Delhi based consignment contains(New year Diaries and Gift items) which were illegally confiscated by the respondents on 26/10/2017 from the Petitioner's warehouse.

For Appellant : Mr.Sankara Subbu

For Respondents : Mr.Srinivas

JUDGMENT

SUBRAMONIUM PRASAD, J.

This Writ Appeal is directed against the judgment and order dated 06.04.2018, passed by the learned Single Judge of this Court in W.P.No.1439 of 2018.

2.The writ petitioner / appellant herein has filed the instant writ petition for issuance of a Writ of Mandamus, to direct the respondents to remove the seal affixed in the petitioner's warehouse located at godown No.G-18/12A, Sathangadu Village (Basin Road), Thiruvottiyur, Chennai - 600 019 and for a further direction to direct the respondents to return consignments under; (i) Bill of Entries No.365464, dated 13.10.2017 - (Stationary House hold articles and Cosmetics) (ii) Bill of Entry No.2498204, dated 18.07.2017 - (Decorative Items), (iii) Bill of Entry No.34899207 dated 04.01.2017 - (Glass Beads and Stationary items), (iv) Bill of Lading No.GOSUNGB 1023220 dated 28.09.2017 (House Hold articles) and (v) Delhi based consignment containing (New Year Diaries and Gift items) which according to the appellants were illegally confiscated by the respondents on 26.10.2017 from the petitioner's warehouse.

3.The Writ Petition was filed on the following averments:

(a) The Appellant is the Manager of M/s.Track Road Transporters Private Limited, Chennai, having its office at godown No.G-18/12A, Sathangadu Village (Basin Road), Thiruvottiyur, Chennai - 600 019. M/s.Track Road Transporters Private Limited deals with logistics business, rendering the services of loading and unloading Cargo / goods from carriers and kept in their warehouse and then transport them in carriers to various destinations as per the instructions of the customers.

(b) On 24.10.2017, one Mr.Magesh, who is also known as Mr.Ashok requested the service of the appellant to transport the Cargo / goods from his 40 feet container owned by him parked at Madhavaram Parking yard to be sent to Manali. It is stated that labourers were sent to unload the goods from the 40 feet container to carrier vans and they were kept at the warehouse of M/s.Track Road Transporters Private Limited, Chennai.

(c) It is averred that on 24.10.2017 itself on the instructions of said Magesh @ Ashok, goods were transported from the warehouse to 16 small goods carriers arranged by Magesh @ Ashok and the goods were removed.

(d) It is averred that on 25.10.2017 at about 4 p.m., certain persons who introduced themselves as Customs Officials entered into the warehouse seized the documents and sealed the godown.

(e) It is averred that between 26.10.2017 to 30.06.2017 goods belonging to other customers / exporters, which were kept in the warehouse were removed. The details of the five consignments which were also removed amongst other articles are as follows:

(i) Bill of Entries No.365464, dated 13.10.2017 – (Stationary, House hold articles and Cosmetics),

(ii) Bill of Entry No.2498204, dated 18.07.2017 – (Decorative Items),

(iii) Bill of Entry No.34899207 dated 04.01.2017 – (Glass Beads and Stationary items),

(iv) Bill of Lading No.GOSUNGB 1023220 dated 28.09.2017 (House hold articles) and

(v) Delhi based consignment – (Diary, Gift items)

(f) It is averred that the goods kept in the warehouse are with proper documents. The Customs Authority had illegally sealed the warehouse and had taken away the goods belonging to other customers and hence the Writ Petition for desealing the warehouse and return of goods.

4.Counter was filed by the Customs Authorities stating that Bill of Entry No.3325365 dated 21.09.2017 was intercepted by the Special Intelligent Investigation Branch of Customs and the examination of the goods covered under the Bill of Entry revealed that Sewing Machines Needle had been imported from China without paying anti-dumping duty. Letters were sent to the importers and the directors of the companies, which were returned as "no such address". The information received by the Special Intelligent Investigation Branch of Customs was that the goods covered under Bill of Entry No.3325365 had been illegally removed from the Container Freight Station (CFS) on 23.10.2017 at about 10.45 p.m. based of the forged documents. It was stated that the appellant / petitioner is involved in removal of such goods on the basis of forged documents including the fake import delivery order. It was stated that these goods were kept at the godown belonging to the appellant. It was stated that the investigation was at a crucial stage therefore, the writ petition could not entertained.

5.The learned Single Judge by the impugned order accepted the statements of the respondent / Department that the appellant is involved in the removal of goods based on forged documents and he is using his godown for keeping smuggled goods. The learned Single Judge therefore rejected the prayer for desealing the godown or the return of the consignments. The learned Single Judge disposed of the Writ Petition directing the respondents / Department to issue fresh summons to the appellant / petitioner and directing the appellant / petitioner to cooperate with the Investigation. This order is sought to be challenged in the instant Writ Appeal.

6.Heard Mr.Sankara Subbu, learned counsel appearing for the appellant and Mr.Srinivas, learned counsel appearing for the respondents.

7.Mr.Sankara Subbu, learned counsel appearing for the appellant contented that Section 110 of the Customs Act does not give any power to the Customs authorities to seal a godown. He further submitted that the goods, which had been taken away by the authorities did not pertain to the goods covered under the Bill of Entry No.3325365 dated 21.09.2017 and therefore the goods which have been seized by the authorities have no connection with Bill of Entry No.3325365. He further submitted that the appellant was not served with any notice for confiscation under Section 124 of the Customs Act within six months of the seizure of the goods and therefore, the goods had to be returned to the appellant.

8.On the other hand, the learned counsel for the respondents / department contended that Section 110 of the Customs Act would take into its ambit the power to seal a godown. He would further contended that under proviso to Sub-Section 2 of Section 110 of the Customs Act a show cause notice has been issued for Act for extending the period to issue a show cause notice under Section 124 of the Customs Act. It was contended that by an order 24.04.2018, the period for issuance of show cause notice under Section 124 of the Customs Act has been extended by six months.

9.Section 110 of Sub-Sections 1 and 2 and Section 124 are reproduced as under:

> "(1) If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods:
>
> PROVIDED that where it is not practicable to seize any such goods, the proper officer serve on the owner of the goods an order that he shall not remove, part with, or other wise deal with the

goods except with the previous permission of such officer.

(2) Where any goods are seized under sub-section (1) and no notice in respect thereof is given under clause (a) of section 124 within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized:

PROVIDED that the aforesaid period of six months may, on sufficient cause being show, be extended by the [Commissioner of Customs] for a period not exceeding six months.

124. Issue of show cause notice before consfiscation of goods, etc.,

No order confiscation any goods or imposing any penalty on any person shall made under this Chapter unless the owner of the goods or such person-

(a) is given a notice in [writing with the prior approval of the officer or customs not below the rank of [an Assistant Commissioner of Customs], informing] him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and

(c) is given a reasonable opportunity of being heard in the matter:

PROVIDED that the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned be oral."

10.The first question that arises for consideration is whether Section 110 would within these scope to include the power to seal a godown from where goods are seized. Section 110 of the Customs Act provides that if there is a reason to believe that the goods are liable for confiscation under the Customs Act, proper Officer may seize such goods. The case of the respondents / department is that when they inspected the premises, there were goods lying in the godown without any documents to establish the authenticity of the goods and that the goods appeared to had been removed by using forged documents. 2522 cartons / packages were recovered from the godown. It is contended that the godown was being regularly used for keeping goods, which are illegally removed from CFS by using forged documents. In the counter affidavit filed before the learned Single Judge, the respondent department has given other instances when the goods illegally removed items from CFS, on the basis of forged documents, which were kept in the godown of the appellant. The respondent in the counter to the writ petition had as stated as under:-

"8.During investigation it is also found that along with M/s. Rashi Traders container from Continental - 1 CFS other containers from various other CFSs as given below were also cleared by forging the documents following the same modus operandi. It appears that the key operators / masterminds in illegal removal of followings goods also the same as in the removal of goods pertaining to container number ZCSU8954812 in the present case. On investigation it appears that Shri Ravindra Kumar, the petitioner/accused herein is one of the key persons actively involved in illegally removal and storage of goods based on forged documents.

S.No	Bill of Entry and date	Container number	Name of the Importer	Name of the CFS	Goods
1	2541723 Dt 21/07/2017	MSKU9321917	Aswin & Co	Balmer & Laurie	Fake branded shoes
2	2541969 Dt 21/07/2017	TCLU5533401	Aswin & Co	Balmer & Laurie	Ladies purse and fake branded shoes
3	9748588 Dt 19/05/2017	WHLU5385462	Raj Enterprises	Continental-1	Neck Paper, tissue roll & speakers
4	2548934 Dt 21/07/2017	ZCSU8460569	A.K.Imports	Continental-2	Fake branded shoes, household items, PTFE tape etc
5	BL No.NYKSNB.6W01026400 dt. 03.11.2016	FCIU9286908	Sky & Sea Exports	Viking	Toys, hand bags, party popper etc

S.No	Bill of Entry and date	Container number	Name of the Importer	Name of the CFS	Goods
6	9553735 dt. 04.05.2017	TGHU8964680	Ekdant Enterprises	Kences Container Terminal Limited	Plastic Beads

9.The investigation carried out indicates that the petitioner herein, Shri Ravindra Kumar, with the help of other persons, is the key player in illegal removal of goods from the CFSs, using forged documents and storing the illegally removed goods. Hence, Shri Ravindra Kumar, has committed the offences under Section 135 of the Customs Act, 1962, which reads as "if any person acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing or in any other manner dealing with any goods which he knows or has reason to believe, are liable to confiscation under Section 111 or Section 113 as the case may be, he shall be punishable with imprisionment for a term which may extend to seven years and with fine". In the current Bill of Entry No.3325365 dt. 21.09.2017, the evasion of duty/ anti-dumping duty of around Rs.2.5 Crores is involved. Shri Ravindra Kumar is one of the key operators of the syndicate and has organiszed smuggling of goods and evasion of Customs duty by illegally removing the goods from CFS's based on forged documents in guise of dummy or non-existent persons / IEC etc."

11.It is submitted by the respondents that it is necessary to ensure that the godown is not used for storing goods, which have been removed by using forged documents. The learned counsel for the respondents / department has relied on a judgment of Madhya Pradesh High Court in Vilayat Hussain Vs. Union of India reported in 1997 (95) E.L.T. 19 (M.P.) to substantiate his contentions regarding the power to seal the godown. A perusal of Section 110 of the Customs Act 1962, shows that there is no prohibition for sealing any godown, in which goods which have been illegally removed from CFS, using forged documents. Customs Authorities can seal the godown, alongwith the goods inside or seize of the goods and seal the godown, as a preventive measure to restrain the godown owner from using the godown keeping illegally removed goods, atleast till such time, the proceedings of confiscation, regarding the goods, being adjudicated upon. According to the respondents, the prayer for desealing the godown, cannot be granted, at this stage.

12.The second question that arises for consideration is that as to whether the respondent is bound to return the goods to the appellant since no notice under Section 124 of the Customs Act has been issued. Learned counsel appearing for the appellant contended the department has to return the goods in view of the mandate of Sub-Section 2 of Section 110 of the Customs Act has lapsed.

13.Learned counsel for the petitioner has relied following judgments:

(i) E.S.I. LTD., Vs. Union of India reported in 2003 (156) E.L.T. 344 (Cal.);

(ii) Principal Commissioner of Customs (Import) ICD & Ors Vs. Santhosh Handloom dated 29.04.2016 in LPA.No.88 of 2016 & Cms.No.4738 of 2016;

(iii) Judgment of the Delhi High Court in Jatinder Kumar Sachdeva Vs. The Union of India and Ors dated 08.12.2016 in W.P.(C) No.1492 of 2016;

(iv) Judgment of the Bombay High Court in Aadarsh Prints Vs. Union of India reported in 2017 (354) E.L.T. 478 (Bom.) and

(v) Judgment of the Delhi High Court in Mohd. Salman Khan Vs. Union of India and Ors in W.P.(C) No.8825 of 2015.

14. Mr.Srinivas, learned counsel appearing for the respondents / department placed on record that a show cause notice dated 18.04.2018 has been issued by the department, to the appellant, under the Proviso to Sub-Section 2 of Section 110 of the Customs Act, to show cause as to why the period mentioned in Sub-Section 1 of Section 110 of the Customs Act, be not extended by another period of six months.

15. A perusal of the show cause notice dated 18.04.2018 issued by the department, show that the appellant was called for a personal hearing on 23.04.2018. Since nobody appeared, after considering the materials on record, the Commissioner of Customs, by his order dated 24.04.2018, has extended the period, to issue show cause notice under Section 124 of the Customs Act 1962, by another six months. The decision on which reliance has been placed by the learned counsel for the appellant, for return of goods is of no assistance to the petitioner, in view of the order dated 24.04.2018, which has been passed by the authority, under Proviso to Sub-Section 2 of Section 110 of the Customs Act.

16.After the hearing in the instant writ appeal was concluded, learned counsel for the appellant has filed an additional memo contending that

(i) Mr.Ashok had handed over the goods under Bill of Entry No.3325365 only after obtaining proper clearance from the Customs Authority and the goods, which were handed over by Mr.Ashok had been taken away by him on 24.10.2017.

(ii) It was contended that since the goods that have been taken away did not pertain to Bill of Entry No.3325365 and that pertain to other valid Bill of Entry. The Customs Authority could not have seized these goods.

(iii) It is stated in the memo that the entire show cause notices dated 18.04.2018 and 24.04.2018 pertain only to Bill of Entry No.3325365 dated 21.09.2017.

(iv) The appellant did not receive any summons or show cause notice pertain to consignments, which had been seized by the Customs Authority. (v) The appellant also placed reliance on the judgment of this Court in M/s.A.S.Enterprises Vs. The Commissioner of Customs delivered on 02.06.2016 in W.P.No.34581 of 2015.

17.The process has been initiated, on the basis of intelligence, received to the effect that an attempt is being made to import Sewing Machines Needles, without paying anti-dumping duty, and by mis-declaring them. When the Customs Authorities reached the godown of the appellant, they recovered 2522 cartons / packages, without any supporting documents. The contention of the learned counsel for the appellant is that since the goods seized, pertain to Bill of Entry No.3325365, dated 21.09.2017 and therefore, these goods will have to be returned and cannot be accepted since there were no proper documents for these goods and they appeared to have been taken out of the custom warehouse on the basis of forged documents. The appellant is a transporter and according to him, the goods belonging to other customers imported under valid bill of entries were kept in his godown. The owners of this goods have not claimed for release of these goods. This leads very strong suspicion that these goods had been removed from CFS without proper documentation or on forged papers. Investigation regarding these goods is going on and for this purpose, the department has passed orders to extend the period mentioned in Section 110 (2) of the Customs Act, for issuing show cause notice under Section 124 of the Customs Act by further period of six months. The respondent by order dated 24.04.2018, has extended the period to issue show cause notice and this order has not been challenged.

18.The godown was sealed on 25.10.2017. Eight months have passed, the authorities are directed to complete the investigation forthwith and pass orders. Desealing cannot be permitted till the finality of the proceedings initiated under Section 124 of the Customs Act.

19. Hence, the Writ Appeal is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1.The Commissioner of Customs (Commissionerate-III),
Customs House,
No.60, Rajaji Salai,
Chennai 600 001.

2.The Additional Commissioner of Customs, (DIU/SIIB)
Customs House,
No.60, Rajaji Salai,
Chennai 600 001.

+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.55468

+1cc to Mr.S.Zakirhussain, Advocate, S.R.No.52955

W.A.No.987 of 2018

RSI(CO)
GSP(30/08/2018)