

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.2.2018

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WRIT PETITION NOS.2570 TO 2575 OF 2018

& WMP.NOS.3166 TO 3173 OF 2018

- 1.M/s.Veracious Folks Overseas
Ltd.,rep. by its Director
Shri.Tejbir Bala
- 2.Shri.Tejbir Bala, Director of
M/s.Veracious Folks Overseas
Ltd.
- 3.Shri.Rajiv Mehta, Director of
M/s.Veracious Folks Overseas
Ltd.
- 4.Shri.Surinder Mehta, Director
of M/s.Veracious Folks Overseas
Ltd.

...Petitioners in
WP.2570/2018

- 1.M/s.Indus Valley Collections
rep.by its Director Shri.Rajiv
Mehta
- 2.Shri.Rajiv Mehta, Director of
M/s.Indus Valley Collections
- 3.Shri.Gopal Mehta, Director of
M/s.Indus Valley Collections

...Petitioners in
WP.2571/2018

M/s.East West Gallery, rep.by
its Proprietor Shri.Sanjiv Kumar

...Petitioner in
WP.2572/2018

M/s.Salora International, rep.
by its Proprietor Shri Rajiv
Mehta

...Petitioner in
WP.2573/2018

M/s.United Colors of India, rep.
by its Proprietor Shri Gopal Mehta

...Petitioner in
WP.2574/2018

M/s.Kaushik Enterprises, rep.by its
Proprietor Shri.Jagdish Kaushik

...Petitioner in
WP.2575/2018

Vs

The Commissioner of Customs (EDC)
Chennai-IV Commissionerate 5th Floor,
Krishna Block Custom House,
No.60, Rajaji Salai, Chennai-1.

...Respondent in
WP.Nos.2570 to 2575/18

Common Prayer:

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Mandamus forbearing the respondent from taking up the adjudication proceedings in F.No.S.Misc./159/2010-SIIB/43/2006 pursuant to show cause notices dated 04.11.2016 on merits without deciding the preliminary issues raised by the petitioners through their counsel under interim reply dated 23.11.2017.

For Petitioners : Mr.B.Satish Sundar

For Respondents : Mr.K.Ravi, SPC

COMMON ORDER

Mr.K.Ravi, learned Senior Panel Counsel accepts notice for the respondents. Heard both.

2. The petitioners, who are exporters of leather garments and textile products, have come to adverse notice of the Department, resulting in the issuance of the show cause notices dated 04.11.2016. Since facts are identical, the relevant details pertaining to W.P.No.2570 of 2018 are taken as a lead case.

3. Among other things, the respondent made various proposals in the said show cause notice and they all pertain to the allegation that the petitioners have availed excess drawback. The petitioner, on receipt of the said show cause notice, submitted their reply dated 23.11.2017 through their counsel and they termed their reply as interim reply to the said show cause notice. Though the reply does not contain the factual position, it points out two circumstances, under which, it is contended that the said show cause notice is not sustainable, firstly on

the ground that it is barred by time and cannot be proceeded with, since the said show cause notice proposes to recover the drawback said to have been illegally availed nearly six years after the exports were done.

4. The second contention is that the said show cause notice has been issued by the authority, who is not competent to do so. What is mandated is an opportunity of personal hearing and the Authority considered the same and has given a reply to the petitioner as to how the preliminary points are not sustainable and thereafter sent a notice dated 18.1.2018 fixing the date of personal hearing as 07.2.2018 i.e. tomorrow. Immediately thereafter, the petitioner sent their representation dated 18.1.2018 requesting time to get appropriate instructions from their client. At this juncture, the above writ petitions have been filed.

5. On a perusal of the reply dated 23.11.2017, this Court finds that in the reply, the petitioners have not touched upon the factual issues, but only dealt with only two issues as pointed out above. In any event, this Court cannot direct the respondent to decide the preliminary points in the first instance and pass a separate order and subject to that order, to proceed with the factual issues. Such an exercise is not mandated by the Statute especially while exercising quasi judicial power by the respondent.

6. Even in the decision relied upon by the petitioners in the case of Vodafone International Holdings BV Vs. Union of India [reported in (2012) 6 SCC 757], the Hon'ble Supreme Court, while referring to the decision in the case of Express Newspapers (P) Ltd. Vs. Workers [reported in AIR 1963 SC 569], held that there cannot be any fixed or inflexible rule and whether or not even the preliminary facts should be tried by a High Court in a writ petition must naturally depend upon the circumstance of each case and upon the nature of the preliminary issue raised between the parties.

7. When such is the legal position, obviously this Court cannot issue a direction to the respondent to decide the issue relating to the jurisdiction and competence as preliminary issues and pass a separate order on the same. The powers under the provisions of the Customs Act and the relevant Regulations do not envisage piecemeal hearing to render a decision in a controverted manner. All that this Court can do is to direct the respondent to consider the preliminary issues as first among other issues that the petitioner may raise. For this purpose, the petitioner has to necessarily submit their additional reply on the factual issues to enable the Authority to adjudicate the said show cause notices as a whole.

8. For the above reasons, this Court is of the view that the prayer sought for by the petitioners cannot be granted and that the petitioners should necessarily submit their additional reply to the said show cause notices, touching upon the merits of the matter and thereafter, it is for the respondent to decide the

case.

9. In the result, while holding that the prayer sought for by the petitioners to decide the preliminary issues first and pass a separate order stands rejected, the petitioner is directed to file their additional reply to the said show cause notices dated 04.11.2016 within a period of 30 days from the date of receipt of a copy of this order, covering all the points and issues on the merits of the matter. On receipt of the additional reply, the respondent shall fix a date for personal hearing, hear the authorized representative of the petitioners, adjudicate the said show cause notices and decide the matter afresh. While doing so, the respondent shall decide the preliminary issues raised by the petitioners first among other issues and pass a comprehensive order on merits and in accordance with law, with open mind regardless of the reply sent by the petitioners' counsel dated 18.1.2018. Since the personal hearing has been fixed on 07.2.2018 i.e. tomorrow and in the light of the above directions, the respondent shall defer the personal hearing to a different date and await additional reply to the said show cause notices.

10. In fine, the writ petitions are dismissed with the above directions. No costs. Consequently, the connected WMPs are also dismissed.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

To

1.The Commissioner of Customs (EDC) Chennai-IV Commissionerate
5th Floor, Krishna Block Custom House, No.60, Rajaji Salai,
Chennai-1.

+3cc to Mr.B.Satish Sundar, Advocate sr.no.8695

WP.Nos.2570 to 2575 of 2018&

WMP.Nos.3166 to 3173 of 2018

kk(co)
nr 06/02/2018

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