IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :25.10.2018

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THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.31566 of 2014
and
M.P.No.1 of 2014

G.Karnan ..Petitioner

vs

1.The Commissioner of Customs
(Airport & Air cargo), New Custom
House, Meenambakkam,
Chennai - 600 027.

2.The Assistant Commissioner of Customs
(Adjudication - Air), New Custom House,
Meenambakkam, Chennai - 600 027.
..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents to issue the documents mentioned in the Show Cause Notice dated 03.09.2014 issued from file bearing number O.S.No.34/2014-INT-(AIR)/O.S.No.271/2014 AIU, and also details of the impugned goods and their valuation dealt with therein.

For Petitioner : Mr.S.Gurumurthy

For Respondents : Mr.G.M.Syed Nurullah Sheriff,
Senior Standing Counsel
for R1 & R2

O R D E R

The show cause notice dated 03.09.2014 issued by the Assistant Commissioner of Customs (Adjudication-AIR) is under challenge in this writ petition.

2.The show cause notice impugned has been issued under Section 124 of the Customs Act, 1962. The petitioner is the Director of M/s.Aesthetics Infotech Systems Pvt. Ltd., and the Company of the writ petitioner has been engaged in the business of servicing the second hand computer hardware viz., routers, Hard disk, etc., besides trading in accessories, parts and consumables for the aforesaid hard wares. The Company belongs to the petitioner has licensed to import and export under IEC Code: 0411014552.

3.The petitioner has challenged the show cause notice issued under Section 124 of the Customs Act, mainly on the ground that the respondents have not supplied all the relied upon documents in the impugned show cause notice, enabling the writ petitioner to submit his explanations / objections in respect of the allegations set out in the notice.

4.It is further contended that the basis for the violation of the goods seized in as much as its value has been unilaterally determined as Rs.30,00,000/- and no sufficient reasons are furnished in the impugned show cause notice. The petitioner is of an opinion that the respondents ought to have allowed the detailed inventorization of the impugned goods, thereby making details of the product's, manufacturer's name, model number and serial number, which would to a long way in arriving at the true value prevalent on the date of import.

5.The grounds raised by the writ petitioner shows that the writ petitioner is making an attempt to shift the burden to the Department than submitting an explanations, setting out the facts and details available with the petitioner's Company. The burden of proof in this regard lies with the petitioner's Company and certainly not with the Department. Department on identifying certain incriminating evidences or issuing show cause notices in order to cull out the truth behind such allegations. Thus, it is for the writ petitioner to satisfy the competent authorities under the said Act by submitting their explanations / objections and establishing that they have not committed any irregularities or illegalities, while dealing with their business of importing and exporting.

6.This Court is of an undoubted opinion that the merits and the demerits of the case, can never be adjudicated at this point of time in the present writ petition. The complex facts and circumstances arising on account of certain disputes are to be adjudicated by producing all the original documents and by adducing evidences before the competent authorities, at the time of hearing / enquiry. Contrarily, the writ petition cannot be filed, challenging the very show cause notice, setting out the facts and circumstances of the case.

7.The plain reading of the affidavit filed by the writ petitioner in support of the writ petition, portrays that the writ petitioner is totally in dark in respect of the allegations set out in the show cause notice. Such an attitude of the writ petitioner can never be trusted upon. The petitioner is doing the business of importing and exporting of Computer parts. All the manufacturing details, serial numbers and the particulars would be certainly available with the petitioner Company. The details of imports and exports also would be available with the Act.

8.This being the factum of the case, the writ petitioner ought to have submitted explanations / objections in respect of the allegations set out in the show cause notice. Contrarily, he has chosen to challenge the very show cause notice on merits, which is impermissible.

9.Section 124 of the Customs Act, 1962 denotes Issue of show cause notice before confiscation of goods, etc.,. The provision empowers the competent authority to issue show cause notice before effecting confiscation of goods. Thus, the petitioner ought to have availed the opportunity to establish that they are innocent of the allegations, set out in the show cause notice. Even if a final order has been passed after receiving explanations / objections from the writ petitioner, an appeal provision is available under the Customs Act, more specifically, under Section 128 of the Customs Act, 1962. Thereafter, the writ petitioner is at liberty to approach the Appellate Tribunal also. When the appeal remedies are available under the statute, the writ petitioner ought to have contested the show cause notice by submitting their explanations / objections. Contrarily, the present writ petition has been moved to establish that the writ petitioner are innocent of the allegations, which cannot be adjudicated in the present writ petition under Article 226 of the Constitution of India.

10.No writ proceedings can be entertained against the show cause notice in a routine manner. Judicial review against the show cause notice is certainly limited. A show cause notice can be challenged, if the same has been issued by an incompetent authority, having no jurisdiction or if an allegation of mala fides are raised or if the same is in violation of the statutory rules in force. Even, in case of raising an allegation of mala fides, the authorities against whom such an allegation is raised, to be impleaded as party respondent in the writ proceedings in his personal capacity. In the absence of any one of these legal grounds, no writ proceedings can be entertained against the show cause notice. Intermittent Intervention in statutory proceedings are not preferable and the authorities competent, on initiation of proceedings under the statute, must be allowed to complete the same by following the procedures as contemplated under law. Institutional respects are also to be maintained by the Constitutional Courts. Frequent interventions in the statutory proceedings will certainly cause prejudice to the parties both the petitioner as well as to the Department.

11.Thus, such interventions are to be avoided and such writ petitions filed for the purpose of stalling the enquiry proceedings are to be dealt with cautiously. The Constitutional Courts also should be cautious, while entertaining such writ petitions, wherein the persons are intending to stall the proceedings by keeping the writ petitions pending for years together. Such an attitude of the litigants are also to be deprecated. Equally, the Department, on receipt of Rule Nisi notice from the Hon'ble High Court, must respond to the High Court immediately. The interim orders are granted by the Courts', considering the urgency and to avoid any damage to the litigants. Thus, on receipt of any such interim order, if the Department is of an opinion that certain facts and materials are not placed before the Courts, the authorities competent are bound to file the Vacate Stay Petitions immediately, so as to place all the materials and facts before the Court. Contrarily, the Department cannot be insensitive towards such matters and casually dealing with the matter by not even filing counter affidavit in all such writ petitions. Such an attitude of the officials are also to be construed as negligence and dereliction of duty. The officials, on receipt of the Rule Nisi Notice from the Honb'le High Court, must act without any further delay in order to protect the interests of the Department and the public revenue. Thus, if the negligence, dereliction of duty is found against the officials, the competent authorities are bound to initiate suitable disciplinary actions against all such officials.

12.The statutory proceedings initiated based on certain materials available on record, must reach its logical conclusion. In the present case on hand, the writ petitioner has raised certain grounds by stating that along with the show cause notice, the documents relied upon has not been supplied. All such requests can be made before the competent authorities and the writ petitioner can submit his explanations / objections in respect of the allegations set out in the show cause notice. However, the merits in this regard cannot be adjudicated in a writ petition.

13.This Court is of an opinion that the show cause notice impugned in the present writ petition has been issued under Section 124 of the Customs Act, 1962 and therefore, the writ petitioner is bound to respond to the show cause notice by submitting his explanations / objections and defend his case in the manner known to law.

14.In this view of the matter, the writ petitioner has not established any acceptable legal ground, for the purpose of quashing the show cause notice and accordingly, it is left open to the writ petitioner to submit his explanations / objections on the allegations set out in the charge memo and defend his case by availing the opportunities provided.

15.With these observations, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

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To

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(Airport & Air cargo), New Custom
House, Meenambakkam,
Chennai - 600 027.

2.The Assistant Commissioner of Customs
(Adjudication - Air), New Custom House,
Meenambakkam, Chennai - 600 027.

+1 CC to Mr.G.M.Syed Nurullah Sheriff,SSC sr 72827.

W.P.No.31566 of 2014

RSK(CO)
SP(08/11/2018)