IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2018

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.18660 of 2018
and
W.M.P.Nos.21996 & 21997 of 2018

M/s.Kiran Global Chem Ltd.,
No.42, New Avadi Road,
Kilpauk, Chennai - 600 010
Rep. by its Director Mr.Manmohan Jain ... Petitioner

Vs.

1. The Commissioner of Customs
   Chennai IV Commissionerate,
   Customs House, Chennai - 600 001.

2. The Director General,
   Directorate of Revenue Intelligence,
   7th Floor, D-Block, I.P.Bhawan,
   I.P.Estate, New Delhi - 110 001.

3. The Additional Director General (Adjudication)
   Directorate of Revenue Intelligence,
   2nd Floor, Old Building, New Custom House,
   Ballard Estate, Mumbai - 400 001. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Certiorari, calling for the records connected with impugned communication dated 17.04.2018 issued in F.No.DRI/HQ-CI/50D/MISC-48/2014-CI (Pt-VI)/2521, by the 2nd respondent and to quash the same as issued without any jurisdiction and contrary to law.

For Petitioner : Mr.N.Viswanathan

For Respondents : Mr.T.Pramod Kumar Chopda, for R1
Senior Panel Counsel

Mr.V.Sundareswaran, for R2 & R3
Senior Panel Counsel

ORDER

Heard Mr.N.Viswanathan, learned counsel for the petitioner, Mr.T.Pramod Kumar Chopda, learned counsel for 1st respondent and Mr.V.Sundareswaran, learned counsel appearing for respondents 2 and 3.

2. The petitioner has filed this writ petition challenging the proceedings of the Deputy Director (CI), Directorate of Revenue Intelligence, New Delhi. By the said proceedings the petitioner has been informed that a Common Adjudicating Authority (CAA) has been appointed viz., the Director of Revenue Intelligence, Ahmedabad Zonal Unit, for adjudicating the show cause notices issued to the petitioner by the Commissioner of Customs of various states.

3. The Deputy Director has referred to the guidelines for appointment of a Common Adjudicating Authority (CAA), issued by the Central Board of Excise and Customs (CBEC) vide circular dated 09.06.2015, as amended by circular dated 04.12.2015 and those cases involving revenue of more than Rs.5 Crores have to be invariably assigned to Additional Director General (Adjudication), DRI. Therefore, the petitioner was informed that their cases were accordingly processed, keeping in view the guidelines and the Additional Director General (Adjudication), DRI-Mumbai, was appointed as CAA. Further, the petitioner was informed that there are only two Additional Director Generals (Adjudication), DRI for adjudication of cases pertaining to all the 12 Zones and DRI (Headquarters) and the cases have to be invariably distributed/assigned between them keeping in view various parameters. Further, bearing in mind that the Additional Director General (Adjudication), DRI-Mumbai, is the nearest adjudicating authority in respect of petitioner's cases, he has been appointed as CAA. Therefore, the Deputy Director informed the petitioner that he sincerely regret that their request for change of adjudicating authority in Chennai cannot be acceded to and requested the petitioner to appear and defend their case before the Additional Director General (Adjudication), DRI-Mumbai.

4. The learned counsel for the petitioner submitted that the impugned appointment of a Common Adjudicating Authority (CAA), is wholly without jurisdiction and there is no power vested under the Act.

5. Though the petitioner has not challenged the notification issued by the Government and has questioned only the notification sent by the Deputy Director, since, this Court heard the arguments of the learned counsels on the said point, the matter is taken up for consideration.

6. Notification No.60 of 2015-cus (NT) dated 04.06.2015 states that in exercise of the powers conferred by clause (a) of Section 152 of the Customs Act, 1962 (52 of 1962), the Central Government has given directions that the powers of CBEC, under Sections 4 and 5 of the said Act, may be exercised also by the Principal Director General, Directorate General of Revenue Intelligence, New Delhi, for appointing officers of the rank of Commissioner of Customs or Additional Director General of the said Directorate for the purpose of adjudication of cases investigated by that Directorate.

7. The learned counsel for the petitioner submitted that the power of delegation ought not to have been exercised and the ADG (Adjudication), DRI-Mumbai, ought not to have been appointed.

8. In my considered view, the notification does not speak of delegation of powers of CBEC to the Principal Director General of the Directorate General of Intelligence, but it says that such power of the Board under Sections 4 and 5 of the Customs Act, 1962, may be exercised also by the Principal Director General of the Directorate General of Intelligence. Therefore, the assumption of the petitioner is in correct. With regard to the manner in which the CAA, has to be appointed has been prescribed in the form of guidelines issued by CBEC in Circular No.18/2015-cus dated 09.06.2015. Operative portion of the circular, reads thus

> Principal DG, DRI appointed as common adjudicating authority for cases investigated by DRI - Guidelines [Circular NO.18/2015-Cus., dt.9.6.2015 (F.No.450/145/2014-Cus IV]
>
> Government of India
>
> Ministry of Finance (Department of Revenue)
>
> Central Board of Excise & Customs, New Delhi
>
> Subject: Appointment of common adjudicating authority - Regarding.
>
> Reference is invited to Notification No.60/2015-Cus. (N.T.) dated 4.6.2015, whereby the power to appoint common adjudicating authority in cases investigated by DRI upto the level of Commissioner of Customs have been delegated to Principal Director General of Directorate of Revenue Intelligence in terms of Section 152 of the Customs Act, 1962. This notification was issued in the interest of expediting decision making with resultant benefits to both trade and revenue in terms of faster settlement of outstanding disputes. These appointments were done hitherto by the Central Board of Excise and Customs under Sections 4 and 5 of the Customs Act, 1962.

2. In the light of the aforementioned notification, all cases of appointment of common adjudicating authority in respect of cases investigated by DRI will be handled by Principal DG, DRI. In this regard, the Board has prescribed the following guidelines for Principal DG, DRI:

(a) The following cases initiated by DRI shall be assigned to Additional Director General (Adjudication), DRI:

(i) Cases involving duty of Rs.5 Croes and above.

(ii) ...

(iii)...

(iv)...

(v)....

(b)..

9. The above guidelines have been issued in the interest of expediting decision making with resultant benefits to both trade and revenue in terms of faster settlement of outstanding disputes and since the petitioner's cases involved duty of Rs.5 Crores and above, it shall be assigned to ADG (Adjudication), DRI-Mumbai.

10. Admittedly, the petitioner has not questioned the notification No.60 of 2015-Cus.(NT) dated 04.06.2015 or Circular No.18/2015-cus dated 09.06.2015 and has questioned only the notification sent by the

Deputy Director, who is obviously bound by the orders of the Principal Director General, Directorate General of Revenue Intelligence, r/w the circular issued by the CBEC for appointment of CAA.

11. The learned counsel for the petitioner further submitted that in the show cause notice, what is sought to be enforced is the bond and therefore, it is without jurisdiction. However on a prima facie reading, it is seen that the show cause notice proposes to order confiscation under Section 111(d) and Section 111(o) of the Customs Act. Therefore, the learned counsel is not correct in his submissions to the said extent. However, since the show cause notice is not challenged, this Court does not wish to ponder upon the issue any further or render any positive finding as it may affect the interest of the petitioner and other co-noticees.

12.The learned counsel for the petitioner placed reliance on the decision of the Kolkata High Court in the case of *Navneet*

Kumar Vs. Union of India and others in W.P.No.3337 (W) of 2018 etc. batch dated 10.07.2018.

13. It is seen that in the said case challenge was to the show cause notice issued by the ADG, DRI-Kolkata, invoking Section 124 of the Act. The challenge to the notification was on the ground of lack of jurisdiction. As noted above, the petitioner before us has not challenged the show cause notice.

14. Learned counsel for the petitioner pointed out that the Court has referred to Section 124(a) of the Act, which says that the show cause notice has to be issued in writing with prior approval of the officer of Customs not below the rank of a Deputy Commissioner of Customs. Therefore, it is submitted that the show cause notice is without jurisdiction.

15. Admittedly, the Deputy Director of DRI, is an officer, who is higher in rank than the Deputy Commissioner. Further more in the said decision, the Court has referred to the notification No.40 of 2012-Customs (N.T.) dated 02.05.2012, which has been issued in exercise of powers under Section 2(3) of the Act, wherein the CBEC, has nominated the officers for performing the functions as proper officers in relation to various sections of the Customs Act, 1962. Under the said notification, Deputy Director or Assistant Director of Directorate General of Revenue Intelligence and Directorate General of Central Excise Intelligence are entitled to function as proper officers under Section 28 B and Section 72.

16. But reading the notification to mean that those officers can exercise powers only under those two sections, is misreading of the notification. Because Notification No.40 of 2012, is a notification conferring special powers on certain officers to exercise certain duties under certain Sections of the Customs Act. Further, it is submitted that as against the decision of Kolkatta High Court, the revenue is in the process of filing an appeal.

17. During the course of argument, the learned counsel for the petitioner fairly submitted that the petitioner has not challenged the show cause notice and all points will be canvassed by them, before the adjudicating authority.

18. Thus, for the above reasons, this Court is of the considered view that the impugned communication sent by the Deputy Director is in consonance with the notification issued and there is no reason for questioning the notification on the grounds raised by the petitioner.

19. In the result, writ petition fails and hence, dismissed. No Costs. Consequently, the connected Writ Miscellaneous Petitions are dismissed.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

ars/mkn

To

1. The Commissioner of Customs
Chennai IV Commissionerate,
Customs House, Chennai - 600 001.

2. The Director General,
Directorate of Revenue Intelligence,
7th Floor, D-Block, I.P.Bhawan,
I.P.Estate, New Delhi - 110 001.

3. The Additional Director General (Adjudication)
Directorate of Revenue Intelligence,
2nd Floor, Old Building, New Custom House,
Ballard Estate, Mumbai - 400 001.

+1cc to Mr.N.Viswanathan, Advocate sr.No.51090
+1cc to Mr.T.Pramodkumar Chopra Advocate SR.No.50654
+1cc to Mr.V.Sundareswaren, Advocate Sr.No.50578

GMR(CO)
sm:6.8.2018

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