IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 08.03.2018	Delivered on 28.06.2018

CORAM:
THE HONOURABLE Mr. JUSTICE K.K.SASIDHARAN
AND
THE HONOURA BLE Mr. JUSTICE P.VELMURUGAN

Writ Appeal Nos.1148 and 1149 of 2016
and
CMP Nos.14871 to 14873 of 2016

The Deputy Commissioner of
Central Excise,
Madurai-652 002. .. Appellant in both WAs

.Vs.

Madura Coats Limited,
Rep.by its Vice President-Excise,
New Jail Road,
Madurai-625 00. .. Respondent in both WAs

Common Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 09.03.2016 made in W.P.Nos.2782 & 2783 of 2002.

Writ Petition filed under Article 226 of the constitution of India to issue a Writ of Prohibition prohibiting the respondent from proceeding any further with the proceedings initiated vide show cause notice Nos.22/2001 dated 07/11/2001 and No.21/2001 dated 01/11/2001 and No.21/2001 dated 01/11/2001 respectively.

For Appellant in both WA's : Mr.G.Rajagopalan for Mr.B.Babu Manohar

For Respondent in both WA's : Mr.C.Mohan for Mr.A.Yogeswaran

COMMON JUDGMENT

(Judgment of the Court delivered by P.VELMURUGAN, J.)

The case of the appellant is that the respondent is a 100% Export Oriented Unit [EOU] manufacturing and clearing various types of fabrics and yarn in Domestic Trade Area [DTA] subject to conditions including payment of applicable Customs and other duties. The respondent executed a Bond No.1/923 dated 11.06.1992 with the Assistant Collector of Central Exercise, Tirunelveli undertaking to abide by the conditions stipulated for Rs.30 crores. On verification of invoices, two types of Domestic Trade Area clearances, (1) Direct sales to textile dealers and (2) Clearance to their own unit viz., Madura Textiles, Vikramasingapuram for further processing and sale were found. But the invoices for the 2nd type of clearances were made in the name of the dealers so as to escape the scrutiny by the Department and to escape assessment under Section 14 of the Customs Act, 1962.

2. The respondent has filed the writ petition Nos.2783 and 2782 of 2002 challenging the Show Cause Notices dated 01.11.2001 and 07.11.2001 respectively, wherein, the appellant demanded the respondent to show cause as to why Rs.2,26,52,858/- [Rupees Two Crores Twenty Six Lakhs Fifty Two Thousand Eight Hundred and Fifty Eight Only] and Rs.6,15,58,731/- [Rupees Six Crores Fifteen Lakhs Fifty Eight Thousand Seven Hundred and Thirty One Only] respectively should not be recovered towards component of excise duty allegedly not paid for the clearance of Grey and Processed fabrics from the 100% EOU periods from 1994-1996 & 1993-1996 respectively, and demanding penalty under Rule 173Q and Section 11AC of Central Excise Act. The respondent on receipt of the show Cause Notice, submitted its explanation and thereafter, challenged the same in W.P.Nos.2782 and 2783 of 2002 respectively.

3. The learned single Judge quashed the Show Cause Notices. Aggrieved by the order passed by the learned single Judge, the present writ appeal has been filed by the appellant.

4. The case of the respondent is that the Show Cause Notices were issued in respect of the periods from 1994-1996 and 1993-1996 respectively. The Show Cause Notices were issued, beyond the period of five years from the relevant date and therefore, the Notices issued are liable to be set aside under Section 11-A of the Central Excise Act. The respondent placed reliance on the judgment of the Apex Court in Union of India and anr. V. Vicco Laboratories reported in (2007) 13 SCC 270, wherein, the Hon'ble Apex Court has held as follows:

> "30. Normally, the writ court should not interfere at the stage of issuance of show cause notice by the author. In such a case, the parties get ample opportunity to put forth their contentions before the authorities concerned and to satisfy the authorities concerned about the absence of case for proceeding against the

person against whom the show cause notices have been issued. Abstinence from interference at the stage of issuance of show cause notice in order to relegate the parties to the proceedings before the authorities concerned is the normal rule. However, the said rule is not without exceptions. Where a show cause notice is issued either without jurisdiction or in an abuse of process of law, certainly, in that case, the writ court would not hesitate to interfere even at the stage of issuance of show cause notice. The interference at the show cause notice stage should be rare and not in a routine manner. Mere assertion by the writ petitioner that notice was without jurisdiction and/or abuse of process of law would not suffice. It should be prima facie established to be so. Where factual adjudication would be necessary, interference is ruled out".

5. Heard the rival submissions on either side and perused the records placed before us.

6. The specific case of the appellant is that the respondent is an 100% Export Oriented Unit manufacturing and clearing various types of fabrics and yarn in Domestic Trade Area subject to conditions including payment of applicable Customs and other duties. The respondent executed a Bond No.1/93 dated 11.06.1992 with the Assistant Collector of Central Excise, Tirunelveli undertaking to abide by the conditions stipulated. On information that M/s.MCL, EOU have indulged in the activity of large scale evasion of Central Excise Duty by means of under valuation, suppression of production, unaccounted removal of yarn and fabrics and misused the concession granted to EOU with regard to plant and machinery, the officers attached to HQRS preventive wing visited the Unit on 10.11.2000 and 11.11.2000 respectively. The officers also conducted simultaneous search of the premises at M/s.Madura Textiles, a division of M/s.Madura Coats Limited at Aladiyur and recovered records and incriminating documents relating to EOU under Mahazar dated 11.11.2000. Based on the search and seizure of records, they issued Show Cause Notices on 01.11.2001 and 07.11.2001 respectively.

7. The main contention of the respondent is on the ground of limitation.

8. A careful perusal of records would show that the appellant and respondent executed a bond with the Assistant Collector on 3.10.1996. From the documents seized, it appears

that Rs.2,26,52,858/- [Rupees Two Crores Twenty Six Lakhs Fifty Two Thousand Eight Hundred and Fifty Eight Only] and Rs.6,15,58,731/- [Rupees Six Crores Fifteen Lakhs Fifty Eight Thousand Seven Hundred and Thirty One Only] respectively were due from the respondent.

9. Therefore, the appellant issued Show Cause Notices on 01.11.2001 and 07.11.2001 respectively for recovering the amount due to the revenue. The Show Cause Notices issued on 01.11.2001 and 07.11.2001 clearly shows that based on specific intelligence report, the Preventive Unit searched the factory premises of the respondent on 10.11.2000 and 11.11.2000 and certain incriminating documents were seized under Mahazar. The Show Cause Notices cannot be termed as time barred. The question of limitation is a mixed question of fact and law. It is not purely a question of law. The said question cannot be decided summarily without considering the materials available on record. The learned Single Judge accepted the case of the respondent without even giving an opportunity to the adjudicating authority to consider the legality and correctness of the contentions taken by the respondent. The order passed by the learned single Judge quashing the Show Cause Notices therefore needs interference.

10. The order passed by the learned Single Judge is set aside. The appeals are allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

KP/tar

TO

1.The Deputy Commissioner of Central Excise,

Madurai - 652 002.

+2cc to Mr.a.Yogeshwaran, Advocate SR.No.41477

W.A.Nos.1148 & 1149 of 2016

GMR(CO)
GN(10/07/2018)