WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2019

CORAM

THE HONOURABLE MR. JUSTICE C.SARAVANAN

Writ Petition No.29526 of 2012

J.Sheikh Parith ... Petitioner

Vs.

1.The Commissioner of Customs,
(Seaport – Exports)
Custom House, Rajaji Salai,
Chennai – 600 001.

2.The Additional Director General,
Directorate of Revenue Intelligence,
South Zonal Unit, 27, Adarsh Towers,
G.N.Chetty Road, T.Nagar,
Chennai – 600 017. ... Respondents

(R2 impleaded as per order dated 24.10.2019
made in CMP.No.29666 of 2019 in
WP.No.29526 of 2012 by ASMJ)

Prayer: Writ petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records connected with impugned notice of the respondent dated 19.10.2012 issued in F.No.CAU/DRI/CHENNAI/2/2012, quash the same, holding the impugned notice to be unlawful and against the principles of natural justice and consequently direct the respondent to provide the documents and details as sought for by the petitioner vide his letter dated 19.04.2012.

For Petitioner : Mr.Vijaynarayanan,
Senior Counsel for
Mr.N.Viswanathan

For Respondents : Mrs.Aparna Nandakumar CGSC
for R1

: Mr.V.Sundreswaran, SPC for R2

ORDER

In the present writ petition the Petitioner has challenged the impugned hearing notice dated 19.10.2012 issued by the

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

Appraiser of Customs fixing personal hearing in Show Cause Notice No. F.No.VIII/48/28/2011-DRI dated 22.12.2011 before the 1st respondent on 02.11.2012. The said show cause notice was issued by the 2nd respondent Directorate of Revenue Intelligence to the petitioner, M/s.Majestic Impex and M/s.SSP Enterprises and two others.

2. At the time of receipt of the aforesaid show cause notice, the petitioner had also acknowledged having received all the relied upon documents. The case against the petitioner was that he used the Import-Export Code of M/s.Majestic Impex and M/s.SSP Enterprises and had cleared several consignments of goods by resorting to mis-declaration in the value of the imported goods. The show cause notice called upon the petitioner and other notices to show cause as to why the classification adopted, the exemption claimed and the value declared should not be rejected and to show cause as to why differential duty should not be demanded and why penalty should not be imposed on the notice.

3. It is not necessary to delve into the merits of the allegations in the show cause notice for the purpose of this Writ Petition. On 19.04.2012, the petitioner in his capacity as the unauthorised signatory of M/s.SSP Enterprises requested for 3 months to give reply and also called upon the 1st respondent to furnish the documents for preparing the reply even though all the relied upon documents were acknowledged as having received by the petitioner in his individual capacity as the authorised representative of measures SSP enterprises and the clearing and forwarding agents of the petitioner.

4. On 13.10.2012, the present writ petition was filed by the petitioner. On 07.11.2012 the other notice namely M/s. Majestic Impex filed W.P.No.29833 of 2012 for an identical relief as in the present writ petition. The said writ petition also was filed by the petitioner in his capacity as the authorised signatory of M/s.Majestic Impex. The said writ petition was dismissed by an order dated 07.11.2012.

5. Thereafter, the petitioner filed yet another writ petition in WP.No.899 of 2013. In the said writ petition the petitioner prayed for a direction to direct the 1st respondent to furnish certain documents as detailed by M/s.SSP enterprises vide letter dated 19.4.2012 for a property adjudication of the aforesaid show cause notice. By an order dated 22.12.2014, the said writ petition was also disposed with the direction to the respondents herein to furnish the documents as detailed in the said order. The operative portion of the said order reads as under:-

4.After hearing the submissions of the learned

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

counsel for the parties and perusing the materials on record, the dispute, which has arisen in this writ petition is confined only to the following documents mentioned by the first respondent in his order and the learned counsel for the petitioner submits that in all other aspects, the petitioner is not pressing for the request made for. Therefore, the respondents are directed to comply with the directions issued by this Court in this order which have been specifically indicated against each document in the tabulated form given below.

Serial Number	Documents sought	Directions Issued
3		The respondent/ department is directed to give a copy of the details available in 2 GB Pen Drive apart from the documents which have already been furnished.
9		The respondent/department is directed to provide copy of the letters sent by the department to the State Bank of Travancore, Kuralagam Branch.
21		The respondent/department is directed to furnish Photostat copies of licences and the petitioner shall remit the cost for such Photostat copies.
26		The respondent/department is directed to furnish Photostat copies of all documents on the petitioner remitting the appropriate charges.
28		The respondent/department is directed to furnish Photostat copies of all documents and the petitioner shall remit appropriate charges.

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

Serial Number	Documents sought	Directions Issued
32		Proceedings in Show Cause Notice, the statement of all Inspectors (Examiners),Custom House, Chennai recorded under Section 108 of the Customs Act,1962 and the same shall be furnished on payment of charges.

Regarding Sl.Nos.38 to 43, the petitioner would contend that the copies of the bill of entries, Examination reports, Extracts, Images /print outs of 'out of charge' order have already been seized by the officers and no records are with the petitioner. Therefore, the petitioner seeks a direction to the respondent to furnish the documents and details to the petitioner.

5.In the light of the above, the respondent/department is directed to furnish copies of the bills of entry, examination reports, extracts/images/printouts of 'out of charge' order and examination report in respect of the concerned bill of entry on payment of charges. In all other aspects, the impugned order stands confirmed and the writ petition is allowed only to the extent indicated in respect of documents mentioned in the above tabulated statement and Sl.Nos.38 to 43.

6.In the result, the writ petition is partly allowed and the respondent is directed to comply with the direction issued in the above tabulated statement and in paragraph 5 above and in all other aspects, the impugned order stands confirmed. No costs. Consequently, connected miscellaneous petition is closed.

7.The petitioner shall obtain the documents from the respondent/department which shall be furnished within a period of three weeks from the date of receipt of a copy of this order. Thereafter, the petitioner is directed to submit his explanation to the show cause notice within a period of four weeks thereafter. The respondent/department is directed to adjudicate the matter after affording a personal hearing and the petitioner is directed to co-operate in the

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

adjudication proceedings without seeking for any adjournments.

6.It is submitted that the said order dated 22.12.2014 has not been fully complied till date by the 2nd respondent and therefore the petitioner has not given a reply so far to the show cause notice on merits. The documents which were directed to be furnished to the petitioner are documents which are not relied in the aforesaid show cause notice. According to the petitioner they are material and relevant for preparing their reply to the said show cause notice.

7.Petitioner further submits that the 2nd respondent had recorded statements from several officers of the customs department but has not furnished the same and therefore in absence of these documents, the petitioner is unable to effectively defend himself in the show cause notice.

8.Petitioner further submits that during the interregnum section 28 of the Customs Act, 1962 has been amended with effect from 28.3.2018 with the insertion/sub-stitution of sub-clause (9) to Section 28 of the Customs Act, 1962 and therefore Show Cause Notice No. F No.VIII/48/28/2011-DRI dated 22.12.2011 issued by the 2nd respondent which was made answerable to the 1st respondent is deemed to have abated in absence of adjudication and therefore prays for a declaration declaring the show cause proceeding as having abated.

9.Heard Mr.Vijay Narayan, the learned Advocate General for the petitioner duly instructed by Mr.N.Vishwanathan the learned counsel for the petitioner, Mrs.Aparna Nandakumar the learned counsel for the 1st respondent Commissioner of Customs and Mr.V.Sundereswaran, Senior Panel Counsel for the 2nd respondent Directorate of Revenue Intelligence (DRI).

10.At the outset, it should mentioned that no writ petition can be entertained to quash a hearing of notice as it is not an order. At the same time, it should be remembered that the 2nd respondent as an investigative agency cannot retain the seized documents. Once its completes investigation and issuing of Show Cause Notice, it should return the same or give back photo copy to the person to who it belonged.

11.During the interregnum several correspondences have been sent since the filing of the present writ petition to thwart the adjudication of the show cause notice by the 1st respondent. Some of the correspondence are after filing of the present petition during its pendency. Details of this correspondence are as under:-

03.11.2015	Copy of the 2nd respondent letter sent to the petitioner along with documents in pursuance with Hon'ble High Court order in W.P.No.899 of 2013 with Postal Receipt.

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

06.11.2015	Copy of the 2nd respondent letter sent to the petitioner along with documents in pursuance with Hon'ble High Court order in W.P.No.899 of 2013 with Postal Receipt.
22.12.2016	Letter sent by the 1st Respondent for personal hearing.
26.12.2016	Reply letter sent by the petitioner in pursuance to the personal hearing letter dated 22.12.2016 requesting document and refusing to appear for personal hearing.
21.08.2017	Letter sent by the 1st Respondent for personal hearing.
26.08.2017	Reply letter sent by the petitioner in pursuance to the personal hearing letter dated 22.12.2016 requesting document and refusing to appear for personal hearing.
08.04.2019	Copy of letter sent by the 1st respondent to the 2nd respondent requesting proof of sending the documents.
15.04.2019	Copy of letter sent by 2nd respondent.
20.06.2019	Copy of letter sent by the 1st respondent to the 2nd respondent requesting 2GB pen drive.
04.07.2019	Copy of letter sent by the 2nd respondent to the respondent in pursuance to 2GB.
14.08.2019	Copy of letter sent by the 1st respondent to the 2nd respondent for documents for adjudication.
25.09.2019	Copy of letter sent by the 2nd respondent to the 1st respondent in pursuance to 2GB.

12.As per Circular No. 394/15/88-Cus A.S dated 13.6.1996 and Circular No. 207/09/2006-CX, the 2nd respondent was required to return the documents not relied upon/considered useful from any angle to the parties concerned. The 2nd respondent however failed to do so. Despite order dated 22.12.2014 in W.P.No. 899 of 2013, barring few documents, not all the documents directed to be furnished have been supplied. Since the 2nd respondent has not fully complied with the said order, I am of the view, the 2nd respondent should be directed to strictly comply with the said order in letter and spirit within a period of 30 days of receipt of this notice. The petitioner thereafter shall go to the office of the 2nd respondent on the 1st instance on 30th/31st of December 2019 to collect the documents. The 2nd respondent shall hand over rest of the documents in compliance of the order dated 22.12.2014 without any reservation.

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

13.The petitioner and other notices shall thereafter file their reply to the Show Cause Notice No.F.No.VIII Dated 22.12.2011 within a period of 90 days i.e latest by 31st March, 2020. Under no circumstances any extension of time for filing the reply shall be entertained as the adjudication of the show cause proceeding has been considerably delayed by about seven years due to pendency of the present writ petition. The 1st respondent shall thereafter proceed to adjudicate the Show Cause Notice No.F.No.VIII Dated 22.12.2011 within a period of six months from the date of receipt of a copy of this order.

14.All the defences raised in the present writ petition including the submission regarding abatement of show cause proceedings in the light of section 28 (9) Of the Customs Act, 1962 is left open to be decided by the 1st respondent.

15.The present Writ Petition stands disposed in terms of the above observations. No costs.

Sd/-

Assistant Registrar (J)

//True Copy//

Sub Assistant Registrar

drl

To
1.The Commissioner of Customs,
(Seaport – Exports)
Custom House, Rajaji Salai,
Chennai – 600 001.

2.The Additional Director General,
Directorate of Revenue Intelligence,
South Zonal Unit,
27, Adarsh Towers, G.N.Chetty Road,
T.Nagar, Chennai – 600 012.

+2cc to Mr.N.Viswanathan, Advocate, S.R.No. 103895
+1cc to Mr.V.Sundareswaran, Advocate, S.R.No. 104153

W.P.No.29526 of 2012

GN(19/12/2019)

https://hcservices.ecourts.gov.in/hcservices/