In the High Court of Judicature at Madras

Dated : 08.3.2019

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Writ Appeal No.777 of 2019 & CMP.No.6107 of 2019

M/s.Southern Gold Private Ltd.,
rep.by its Director Mr.Collins C.A. ..Appellant/Petitioner

Vs

The Commissioner of Customs,
office of the Principal Commissioner
of Customs, New Custom House,
Chennai VII Commissionerate,
Air Cargo Complex, Meenambakkam,
Chennai-27. ...Respondent/Respondent

APPEAL under Clause 15 of the Letters Patent against the order dated 22.1.2019 passed in W.P.No.1565 of 2019.

Prayer in WP No.1565 of 2019 : Writ Petition filed under Article 226 of the Constitution of India Praying to issue a Writ of certiorari quashing the Show Cause Notice in F.No.S.Misc.012-2018-Bonds(AIR) dated 29.09.2018 as modified by an Addendum to Show Cause Notice dated 29.09.2018 in F.No.S.MISC.012-2018 dated 24.12.2018.

For Appellant : Mr.N.Venkataraman, SC for
Mr.S.Muthurvenkataraman

For Respondent : Mr.T.Pramod Kumar Chopda, SSC

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Judgment was delivered by T.S.SIVAGNANAM,J

We have heard Mr.N.Venkataraman, learned Senior Counsel appearing on behalf of Mr.S.Muthuvenkataraman, learned counsel on record for the appellant and Mr.T.Pramod Kumar Chopda, learned Senior Standing Counsel accepting notice for the Revenue.

2. This appeal is directed against the order dated 22.1.2019 passed in W.P.No.1565 of 2019.

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3. The said writ petition was filed by the appellant challenging the show cause notice dated 29.9.2018 and the addendum dated 24.12.2018. The learned Single Judge, after considering the facts, held that the said writ petition was premature. We are of the considered view that the finding rendered by the learned Single Judge is perfectly valid and calls for no interference.

4. The endeavor of the learned Senior Counsel appearing on behalf of the appellant is to convince this Court that the adjudication of the impugned show cause notice should not take place since, in the proceedings initiated by the Customs Authorities in Kerala State, an order of adjudication was passed against the appellant, that aggrieved by that, two appeals were filed, one by the assessee and another by the Revenue and that in the appeal filed by the Revenue, the Commissioner of Customs (Appeals), Cochin issued enhancement notice and ultimately, it had resulted in an order dated 12.9.2018. Challenging the orders passed by the Appellate Authority, writ petitions were filed by the appellant before the High Court of Kerala and one such writ petition is W.P.(C).No.33787 of 2018.

5. It is submitted by the learned Senior Counsel appearing on behalf of the appellant that an order of interim stay has been granted by the High Court of Kerala in W.P.(C).No.33787 of 2018 on 16.10.2018, that the proceedings, which are now pending before the High Court of Kerala, are substantial proceedings and that any order, which has to be passed in these proceedings, will have a direct impact on the said show cause notice. Hence, it is also submitted that the said show cause notice should not be permitted to be adjudicated by the respondent and the matter should be kept in abeyance.

6. We have heard the learned Senior Standing Counsel for the respondent on the above submissions.

7. We do not agree with the submissions made by the learned Senior Counsel appearing on behalf of the appellant since the appellant alone was not the noticee in the said show cause notice dated 29.9.2018, as the Bank of India was also a noticee in the said show cause notice. In fact, the appellant was not initially shown as a noticee. But, only vide addendum dated 24.12.2018, they have been added as a noticee.

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8. It is submitted by the learned counsel for the appellant that the said show cause notice solely rests upon an Order-in-Original and an Order-in-Appeal passed by the Kerala State Customs Authorities, which are now the subject matter of challenge before the High Court of Kerala and that therefore, the said show cause notice should not be permitted to be

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adjudicated.

9. It is pointed out by the learned Senior Standing Counsel that the reference to the Order-in-Original dated 27.3.2018 is only in paragraph 7 of the said show cause notice, which deals with investigation, which was conducted and what the investigation revealed. It is further pointed out that the said show cause notice should not be interdicted.

10. After hearing the learned counsel for the parties for a considerable length of time and giving our anxious consideration, we are of the considered view that the learned Single Judge was perfectly justified in dismissing the said writ petition. As noticed above, the appellant was not the only noticee in the said show cause notice, but the Bank of India was also a co-noticee. Therefore, on the grounds raised by the appellant, the said show cause notice cannot be interdicted and interfered with at this stage. We hold that the learned Single Judge was fully right in coming to the conclusion that the said writ petition was premature.

11. The learned Senior Standing Counsel appearing on behalf of the appellant has strenuously contended that the orders passed by the Kerala State Customs Authorities have a definite bearing on the said show cause notice.

12. If that is the submission of the appellant, it is always open to the appellant to raise such a contention among several other contentions by way of reply to the said show cause notice. It is needless to state that the Adjudicating Authority will consider this submission along with other submissions, which the appellant may make on the merits of the claim made in the said show cause notice. Except for this observation, we do not wish to make any further observations or render any finding, as it would hamper the adjudication of the said show cause notice.

13. For the above reasons, the writ appeal fails and is dismissed. No costs. Consequently, the connected CMP is also dismissed.

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Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

RS

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To

The Commissioner of Customs, office of the Principal Commissioner of Customs, New Custom House, Chennai VII Commissionerate, Air Cargo Complex, Meenambakkam, Chennai-27.

+1cc to Mr.Muthuvenkataraman, Advocate SR.No.22335

WA.No.777 of 2019 &
CMP.No.6107 of 2019

AK(CO)
GMY(10/04/2019)

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