IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.09.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.27279, 27300, 27301, 27303, 27305 & 27306 of 2019
and
WMP.Nos.26728, 26706, 26730 of 2019

W.P.Nos.27279 & 27300 of 2019
M/s.Evershine Smelting Alloy Pvt. Ltd.,
Represented by its Managing Director
Mr.S.Sekar
Plot No.15C, Zone II, Attibele Industrial Area
Bangalore - 562 107. ...Petitioner

vs.

The Additional Commissioner of Customs (Group 4)
Chennai II Commissionerate
No.60, Custom House, Rajaji Salai,
Chennai-600 001. ...Respondent

W.P.Nos.27301 & 27303 of 2019
M/s.Jain Metal Rolling Mills
Represented by its Partner
Mr.Kamlesh S.Jain
"The Lattice", 4th Floor, New No.20,
Old No.7/1, Waddles Road, Kilpauk,
Chennai-600 010. ...Petitioner

vs.

The Additional Commissioner of Customs (Group 4)
Chennai II Commissionerate
No.60, Custom House, Rajaji Salai,
Chennai-600 001. ...Respondent

W.P.Nos.27305 & 27306 of 2019
M/s.K.S.J.Metal Impex Pvt. Ltd.,
Represented by its Director
Mr.Kamlesh S.Jain
"The Lattice", 4th Floor
New No.20, Old No.7/1,
Waddles Road, Kilpauk, Chennai-600 010. ...Petitioner

vs.

The Additional Commissioner of Customs (Imports)
No.60, Custom House, Rajaji Salai,
Chennai-600 001. ...Respondent

Writ Petition No.27279 of 2019 filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records pertaining to the impugned show cause notice dated 22.03.2019 issued by the respondent in F.No.S.Misc.133/3/2018-Gr.4 and quash the same.

Writ Petition No.27300 of 2019 filed under Article 226 of the Constitution of India praying to issue a Writ of Declaration, to declare that the officers of Customs operating under the provisions of the Customs Act, 1962 do not have the jurisdiction to investigate and institute proceedings against the Indian importers, such as the petitioner, in relation to disputes arising out of implementation of the Free Trade Agreement between the Government of India on Government of Malaysia where specific dispute settlement mechanism has been provided for under the treaty provisions.

Writ Petition No.27301 of 2019 filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records pertaining to the impugned show cause notice dated 08.04.2019 issued by the respondent in F.No.S.Misc.133/7/2018-Gr.4 and quash the same.

Writ Petition No.27303 of 2019 filed under Article 226 of the Constitution of India praying to issue a Writ of Declaration, to declare that the officers of Customs operating under the provisions of the Customs Act, 1962 do not have the jurisdiction to investigate and institute proceedings against the Indian importers, such as the petitioner, in relation to disputes arising out of implementation of the Free Trade Agreement between the Government of India and Government of Malaysia where specific dispute settlement mechanism has been provided for under the treaty provisions.

Writ Petition No.27305 of 2019 filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records pertaining to the impugned show cause notice dated 16.04.2019 issued by the respondent in F.No.S.Misc.133/8/2018-Gr.4 and quash the same.

Writ Petition No.27306 of 2019 filed under Article 226 of the Constitution of India praying to issue a Writ of Declaration, to declare that the officers of Customs operating under the provisions of the Customs Act, 1962 do not have the jurisdiction to investigate and institute proceedings against the Indian importers, such as the petitioner, in relation to disputes arising out of implementation of the Free Trade Agreement between the Government of India and Government of Malaysia where specific dispute settlement mechanism has been provided for under the treaty provisions.

For Petitioners
in all W.P.s : Mr.Hari Radhakrishnan

For Respondents
in all W.P.s : Mr.M.Santhanaraman
standing counsel

C O M M O N   O R D E R

All these writ petitions are filed challenging the show cause notices dated 22.03.2019, 08.04.2019 and 16.04.2019 respectively, issued under Section 28(4) of the Customs Act, 1962.

2. Heard Mr.Hari Radhakrishnan, learned counsel for the petitioners and Mr.M.Santhanaraman, learned standing counsel, who takes notice for the respondents.

3. The petitioners are said to be engaged in the business of importing and trading of various products including Tin Ingots. In the course of such business, the imports of Tin Ingots made by the petitioners said to be Malaysian Origin under the ASEAN India Free Trade Agreement, vide Notification No.46/2011 dated 01.06.2011, were subjected to investigation and consequently, the Customs authorities doubted the origin of the goods imported. Resulting out of such investigation, the impugned show cause notices were issued to the petitioners.

4. Mr.Hari Radhakrishnan, learned counsel for the petitioners contended that the impugned show cause notices are issued without jurisdiction, since the investigation was not conducted by the proper authority. He further contended that there is a dispute between two Countries viz., the Country of origin and the Country of import with regard to the origin determination and

therefore, unless and until such dispute is settled by following the procedures contemplated under the ASEAN India Free Trade Agreement, the present impugned show cause notices cannot be issued. Therefore, the learned counsel sought to contend that these writ petitions are maintainable as against the show cause notices.

5. Upon considering the facts and circumstances, the materials placed before this Court and the arguments advanced by the learned counsel for the petitioners, this Court is not convinced to entertain these writ petitions as against the show cause notices.

6. Though the learned counsel for the petitioners sought to raise the jurisdictional issue, I find that such issue, cannot be put against the Officer, who issued the show cause notices, when such authority is admittedly, having competency and jurisdiction to issue the same. Merely because, it is contended by the learned counsel for the petitioners that the investigation before issuing the show cause notices was conducted by some other authority, even assuming such contention is factually and legally correct, still that cannot be a ground to question the jurisdiction of the authority, who issued the present show cause notices, when admittedly, the same is issued by the competent authority. Needless to say that all these points, can be raised before the Adjudicating Authority by filing their objections to the show cause notices.

7. While considering the next contention viz., there is a dispute between the two countries relating to the origin determination, it is admitted by the learned counsel for the petitioners that no such admission is made in the show cause notices. Therefore, again, the above contention, as a matter of fact, needs to be raised and agitated before the Adjudicating Authority by filing reply. It is well settled that as against the show cause notice, a writ cannot be maintained, unless the same was issued by a non-competent authority having no jurisdiction and that the notice issued on the face of it, is illegal and against law.

8. Therefore, without expressing any view on the merits of the claim made by the petitioners, these Writ Petitions are dismissed as not maintainable only on the reason that the petitioners are not entitled to maintain the writ petitions as against the show cause notices. However, liberty is granted to the petitioners to raise their objections before the authority, who issued the

show cause notices, within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

The Additional Commissioner of Customs (Group 4)
Chennai II Commissionerate
No.60, Custom House, Rajaji Salai,
Chennai-600 001.

2. The Additional Commissioner of Customs (Imports)
No.60, Custom House, Rajaji Salai,
Chennai-600 001.

+1cc to Mr.Hari Radhakrishnan , Advocate SR.No. 79602
+1cc to Mr.M.Santhanaraman , Advocate SR.No. 79417

W.P.Nos.27279, 27300, 27301, 27303, 27305 & 27306 of 2019
and
WMP.Nos.26728, 26706, 26730 of 2019

A.SK(11/10/2019)