IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.07.2019
CORAM
THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.22333 of 2019
&
W.M.P.Nos.21645 to 21647 of 2019

Shri.M.S.Alaudeen .. Petitioner

.Vs.

1. The Additional Director General
Directorate of Revenue Intelligence
No.27, G.N.Chetty Road, T.Nagar
Chennai - 600 017

2. The Joint Commissioner of Customs
Preventive Adjudication Unit
Chennai - III Commissionerate
Customs House, No.60, Rajaji Salai
Chennai - 600 001

3.The Senior Intelligence Officer
Directorate of Revenue Intelligence
No.27, G.N.Chetty Road, T.Nagar
Chennai - 600 017 .. Respondents

Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus calling for the records relating to the Impugned Show-Cause Notice dated 07.06.2019 in F.No.DRI/CRU/VIII/48/ENQ-01/INT-37/2018 issued by the 1st respondent and quash the same as issued without any jurisdiction and contrary to law, further also quash the Seizure Mahazar dated 12.12.2018 of the 3rd respondent as issued without any jurisdiction and contrary to law and consequently direct the Respondents herein to return the seized Gold to an extent weighed 2.810 grams valued at Rs.91,95,725/- without imposing any condition.

For Petitioner : Mr.A.K.Jayaraj

For Respondent : Mr.V.Sundareswaran
Senior Panel Counsel
for R1 and R3

Mr.G.M.Syed Nurullah Sheriff
Standing Counsel for
Customs for R2

O R D E R

Mr.A.K.Jayaraj, learned counsel on record for writ petitioner is before this Court. Mr.V.Sundareswaran, learned senior Panel Counsel accepts notice on behalf of Respondents 1 and 3 and Mr.G.M.Syed Nurullah Sheriff, learned standing counsel accepts notice on behalf of second respondent.

2.With consent of learned counsel on both sides, main writ petition is taken up, heard out and is being disposed of.

3.Main writ petition has been filed assailing a 'show-cause notice' ('SCN' for brevity) dated 07.06.2019 bearing reference F.No.DRI/CRU/VIII/ 48/ENQ-01/INT-37/2018 (hereinafter 'impugned SCN' for brevity) issued by the first respondent.

4.There is a further limb of prayer which is for quashing Seizure Mahazar dated 12.12.2018 issued by the third respondent prior to the impugned SCN. To be noted, Seizure Mahazar is dated 12.12.2018.

5. Prior to the issue of impugned SCN, writ petitioner had approached this Court with regard to the same issue with a prayer to return the seized gold vide the aforementioned Mahazar dated 12.12.2018. This is by way of a writ petition in W.P.No.8527 of 2019. W.P.No.8527 of 2019 was disposed of by this Court on 24.06.2019 after hearing both sides.

6.Operative portion of the said order dated 24.06.2019 in W.P.No.8527 of 2019 is paragraph No.14 and the same reads as follows:

> '14. In the light of the narrative supra, though prayer in this writ petition turns on a narrow compass, this Court deems it appropriate to dispose of the instant writ petition by making the following order:
>
> a) Writ petitioner shall make an application to the 1st respondent under Section 110 A of the Customs Act 1962 seeking provisional release of the seized goods which forms subject matter of instant writ petition i.e., Gold weighing 2.810 kilograms, valued at Rs.91,95,725/- (Rupees Ninety one Lakhs Ninety Five thousand Seven Hundred and Twenty Five only) . Aforesaid application to 1st respondent shall be made by writ petitioner within a fortnight from the date of receipt of a copy of this order.
>
> b) On receipt of the aforesaid application

for provisional release, under Section 110 A of the said Act, 1st respondent shall do the needful for having the same processed in a manner know to law as expeditiously as possible and in any event, within 8 weeks from the date of receipt (receipt by 1st respondent) of Section 110 A application.

c) The order regarding provisional release shall be communicated to the writ petitioner under due acknowledgement within 7 working days from the date on which the order is made.

d) Though obvious it is made clear that it is open to the writ petitioner to either reply to SCN or assail the same in a manner known to law and the order passed in this writ petition will not impede such proceedings.'

7. Four other paragraphs, which are of relevance, are Paragraphs 8, 9, 10, 11 and 12, which read as follows:

'8. A perusal of Section 110 of the said Act reveals that respondents do have the powers to make such seizure.

9. On this primordial plea of the writ petitioner i.e, a plea that respondents do not have powers to seize being doused, one has to now look at the procedure for release of the seized goods, which is the prayer of the writ petitioner.

10. Provisional release of such seized goods can be made under Section 110 A of the said Act.

11. This Court is informed that pending this writ petition, the respondents have issued a 'show cause notice' ('SCN' for brevity), being SCN dated 07.06.2019.

12. In the aforesaid backdrop, instant second writ petition assailing 'impugned SCN' and seizer Mahazar dated 12.12.2018 which is prior to the impugned SCN, has now been filed. Impugned SCN was obviously issued pending earlier writ petition. This Court is informed that in and by a letter dated 21.06.2019 bearing reference F.NO.OS.06/2019-PAU, the writ petitioner was afforded personal hearing on 10.07.2019 or 11.07.2019, but the writ petitioner sent a communication citing pendency of the writ petition (earlier writ petition) and sought re-scheduling of the same. To be noted, personal hearing afforded was pursuant to impugned SCN.'

8. Today, with regard to challenge to impugned SCN, notwithstanding very many averments in the affidavit filed in support of the writ petition and grounds/contentions raised in the affidavit filed in support of the writ petition, learned

counsel for writ petitioner, assailed the impugned SCN primarily by saying that it has been issued on the premise that foreign origin gold has been smuggled into India, whereas there is no foreign origin gold even according to the mahazar, that the impugned SCN states that writ petitioner has committed an offence punishable under Section 135 of 'The Customs Act, 1962' ('said Act' for brevity) and therefore has prejudged the issue.

9. In response to the aforesaid grounds of attack, it is submitted by learned Revenue counsel that the question as to whether it is foreign origin gold turns on facts and with regard to offence punishable under Section 135 of said Act, it is a matter which has to be tested as the adjudication progresses.

10. From the narrative thus far, this Court is left with the considered view that the instant writ petition being one assailing SCN, the scope is very narrow and limited. Grounds available to a writ petitioner assailing a SCN are absent. The reason is with regard to the first point about foreign origin gold it turns on facts and it is subject matter of outcome.

11. With regard to the averment in the impugned SCN that writ petitioner has committed offence punishable under Section 135 of said Act, the same is contained in Paragraph 10 of impugned SCN, which reads as follows:

> '10. By the aforesaid Acts of possession, of the dutiable or restricted and prohibited goods in violation of Section 111(d), (i) and (l) of the Customs Act, 1962, S/Shri Alaudeen, Umapathy and Nagoor Gani are liable for penal Action under Section 112 of the Customs Act, 1962 and they had committed the offence punishable under the provision of Section 135 of the Customs Act, 1962. Accordingly, S/Shri Alaudeen, Umapathy and Nagoor Gani were arrested and released on bail with surety and cash security as the value of the seized goods was less than Rs.one Crore and is bailable offence.'

12. In the considered view of this Court, this is not happily worded, but the submission of the Revenue counsel that aforesaid question as to whether an offence punishable under Section 135 of said Act by the noticee writ petitioner will unfold and unfurl only in the course of adjudication is recorded.

13. A challenge to SCN is available to a writ petitioner, inter alia on the grounds that it has been issued without jurisdiction i.e., it turns on a jurisdictional fact, that it has been issued in complete violation of existing provision/s of law and that it tantamounts to re-opening a settled issue. To be noted, this is not an exhaustive list of grounds, but is

illustrative to the extent that it is necessary to dispose of this case on hand.

14. In this regard, this Court reminds itself of Kunisetty Satyanarayana case [Union of India and another Vs. Kunisetty Satyanarayana reported in (2006) 12 SCC 28]. Most relevant paragraphs are Paragraphs 15 and 16, which read as follows:

> '15. Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge sheet.
>
> 16. No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter.''

15. In the light of the narrative thus far, this Court is of the considered view that the aforesaid exceptions warranting interference in writ jurisdiction have not been made out by the writ petitioner in the instant case. Therefore, while not interfering with the impugned SCN and obviously the Seizure Mahazar prior to the impugned SCN, this Court deems it appropriate to direct respondents to afford an opportunity of personal hearing to the writ petitioner by communicating the date, time and venue of the personal hearing well in advance and thereafter proceed with the adjudication and carry the impugned SCN to its logical end.

16. In the interregnum, it is made clear that there is no impediment for the respondents to process the application for provisional release under Section 110-A of said Act, which is said to have been made.

17. Instant writ petition is disposed of with the above directions. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
1. The Additional Director General
Directorate of Revenue Intelligence
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2. The Joint Commissioner of Customs
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+1cc to Mr.A.K.Jayaraj, Advocate, SR.No.64882
+1cc to Mr.G.M Syed Nurullah Sheriff, Advocate, SR.No.64899
+1cc to Mr.V.Sundareswaran, Advocate, SR.No.65160

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Kak(18/09/2019)