IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.09.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.26722 of 2019
and
WMP.No.26109 of 2019

A.Subukhan
S/o.Abdul Majeed ...Petitioner

vs.

1. The Commissioner of Customs (Preventive)
Office of Principal Commissioner of Customs
Preventive Commissionerate
Customs House, No.60, Rajaji Salai,
Chennai-600 001.

2. The Additional Director General
Ministry of Finance (Department of Revenue)
Directorate of Revenue Intelligence
No.25, Gopalakrishna (Iyer) Road,
T.Nagar, Chennai-600 017.

3. The Commissioner of Customs (Exports)
Customs House, No.60, Rajaji Salai,
Chennai-600 001. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records relating to the impugned order in Original No.68221/2019 dated 29.03.2019 passed by the 1st respondent in F.No.O.S.No.05/2018-PAU/F.No.VIII/48/38/2010-DRI and quash the same as illegal, arbitrary and violative under article 14 of the Constitution of India and Principles of Natural Justice.

For Petitioner : Mrs.Nalini Chidambaram
Senior Counsel
for Mrs.C.Uma

For Respondents : Mr.T.Pramod Kumar Chopda
standing counsel

ORDER

This writ petition has been filed challenging the order in original dated 29.03.2019 passed against the petitioner and others, wherein and whereby, it was ordered to confiscate 1100 Kgs of Ketamine Hydrochloride valued at Rs.1,98,00,000/- under Section 113(d)(e)(h) and (i) of the Customs Act, 1962; to confiscate the Indian currency notes of Rs.60,100/- and foreign currencies viz., US Dollars and Singapore Dollars of various denomination, both Indian and Foreign currencies totally valued at Rs.1,47,850/- and Gold jewellery available at the residence of one S.P.Rajapandian totally weighing 331.18 grams and valued at Rs.5,26,755/- under Section 121 of the Customs Act, 1962; imposing penalty of Rs.75,00,000/- (Rupees Seventy Five Lakh Only) on the petitioner under Section 114 of the Customs Act, 1962 and further imposing penalty on other three persons as well, as stated therein.

2. Mrs.Nalini Chidambaram, learned Senior Counsel appeared for the petitioner and argued the matter.

3. The prime contention of the learned Senior Counsel not only in challenging the order in original and also for maintaining the writ petition is that the order of adjudication was passed inordinately after a period of 8 years from the date of issuance of a show cause notice and therefore, on that ground alone, the impugned order of adjudication is liable to be interfered with and set aside. In support of her contention, the learned Senior Counsel relied on a decision of the Apex Court in the case of Government of India Vs. Citedal Fine Pharmaceuticals, Madras and Others, (1989) 3 SCC 483, the decision of the learned Single Judge of this Court in the case of Transworld Shipping Services Pvt. Ltd., Vs. Government of India, 2018 (361) E.L.T. 176 and the decision of the Calcutta High Court in the case of Surendralal Girdharilal Mehta Vs. Union of India, 2018 (364) E.L.T. 81. Thus, the learned Senior Counsel contended that inordinate delay in passing the order of adjudication vitiates the entire proceedings.

4. Upon hearing the learned Senior Counsel, perusing the materials placed before this Court and going by the offence said to have been committed by the petitioner and others, which has culminated into passing the impugned order of adjudication, I am not inclined to entertain the writ petition only on the above technical ground. First of all, it is to be stated that as against the impugned order-in-original, passed by the adjudicating authority, a statutory appellate remedy is available before the Customs, Excise and Service Tax Appellate Tribunal and such Forum is undoubtedly, an effective alternative Forum where the petitioner is entitled to raise all the grounds by filing an appeal. The Tribunal, being the First Appellate Authority, in this case, will have to certainly go into the merits of the matter in detail and pass orders in accordance with law. Needless to state that as the appellate authority being the fact finding authority as well, the petitioner can approach such authority and agitate the matter by way of filing an appeal. Instead of doing so, the petitioner is not justified in approaching this Court and filing the present writ petition

by raising the above technical ground. Such attempt, in my considered view, is nothing but to short circuit the whole process, which cannot be entertained, going by the facts and circumstances of the present case. This Court has taken the view already in very many cases that as against the order of adjudication, more particularly, in fiscal matters, the person aggrieved has to approach the appellate forum first and agitate the matter therein. In this regard, the following decisions may be usefully referred to.

i) (2010) 4 SCC 772 (Rajkumar Shivhare vs. Assistant Director, Directorate of Enforcement and another).

ii) (2005) 2 MLJ 246 DB (M/s. Nivaram Pharma Private Limited rep. by its Director Sardarmal M.Chordia, Madras vs. The Customs, Excise and Gold (Control) Appellate Tribunal, South Regional Bench, Madras and others).

iii) (2010) 8 SCC 110 (United Bank of India vs. Satyawati Tondon and others).

iv) 2010 (259) ELT 37 (Mad) DB (Maritime Collector vs. Madura Coats Limited)

v) (2010) 4 SCC 554 (Rajeev Kumar and another vs. Hemraj Singh Chauhan and others).

5. It is true that in the decisions relied on by the learned Senior Counsel, the delay in passing the order of adjudication or issuance of show cause notice were considered and it was observed therein that the adjudication proceedings should be completed within a reasonable period even though the Act does not provides for limitation, within which, such exercise has to be done. However, perusal of the facts and circumstances of the case laws relied on by the learned Senior Counsel would show that they are not similar to the one on hand, which in my considered view, is more grave and serious in nature and therefore, mere delay in passing the order of adjudication itself cannot be taken as a shelter by the writ petitioner to escape from the clutches of the adjudication. In this case, it is true that the show cause notice was issued on 01.02.2011 and the Adjudicating Authority called upon the petitioner and others for personal hearing on 10.09.2018. It is not in dispute that on receipt of such notice for personal hearing, the petitioner, without any protest appeared before the authority and submitted himself to his jurisdiction and sought time for personal hearing and thereafter, he was represented by his counsel, who in turn submitted reply to the notice of personal hearing. Perusal of the contentions raised by the petitioner before the Adjudicating Authority would reveal that the merits of the matter alone were raised and agitated and consequently, the Adjudicating Authority rejected those contentions and came to the conclusion and thus,

passed the order of adjudication as stated supra. It is true that the order of adjudication was passed after a period of eight years from the date of issuance of show cause notice. But at the same time, it is to be noted at this juncture that no time limit is fixed under the relevant statute for passing the order of adjudication. In this case, it is to be noted that consideration of the reason for the delay involves the exercise of probing the factual aspects of the matter, which in my considered view need not be done by this Court by exercising its discretionary jurisdiction under Article 226 of the Constitution of India. On the other hand, it can be relegated to the next fact finding authority. Even otherwise, it is to be noted that though the show cause notice was issued on 01.02.2011, further proceedings commenced by issuing personal hearing notice on 10.09.2018. The petitioner has not agitated or protested after receipt of such notice by complaining that the proceedings are being continued after such inordinate delay. On the other hand, he participated and submitted himself to the adjudication process by filing his objection/explanation. Thereafter, the order of adjudication was passed without loss of further time. Therefore, I find that the present facts and circumstances would not fit into the facts and circumstances of the case laws relied on by the learned senior counsel for the purpose of deciding as to whether the impugned order of adjudication is liable to be quashed solely on the ground of delay in passing the order of adjudication. Needless to state that the question as to whether the order of adjudication needs to be interfered with solely on the reason of inordinate delay in passing such order, depends upon the facts and circumstances of each case and cannot be applied as a matter of general principle in all cases, where there is a delay in completing the adjudication process.

6. In this case, the very order of adjudication, while discussing the narration of the facts, the order of adjudication, would disclose that this is not the matter where this Court can exercise the discretionary jurisdiction and entertain the writ petition, solely on the technical reason that the order of adjudication came to be passed belatedly. It is seen that based on intelligence that a gang was attempting to smuggle Ketamine Hydrochloride in bulk quantity and have transported the same to Chennai from Mumbai, the Officers of Directorate of Revenue Intelligence (DRI), Chennai, intercepted one S.P.Rajapandian, the main person in the gang at the Domestic Airport, who was travelling by flight IC 173 from Mumbai to Chennai after booking the Ketamine in various transports in the guise of lactose and other medicines and who was also carrying the lorry transport Receipts with him on 05.08.2010. The narration of the facts, thus, goes further and link the role of the petitioner herein as well in this illegal transaction, based on his confessional statement dated 01.10.2010. Therefore, this

Court is of the view that when such serious allegation was made against the petitioner and others and such allegation has also resulted in passing the impugned order of adjudication, I do not propose to entertain this writ petition only on the technical ground of delay in passing the order of adjudication, more particularly, when the case laws relied on by the learned Senior Counsel are distinguishable on facts and circumstances.

7. Therefore, I am of the view that this writ petition need not be entertained, as the petitioner is having an effective alternative remedy by way of filing an appeal before the concerned Appellate Forum to challenge the order of adjudication. Accordingly, this Writ Petition is dismissed, without expressing any view on the merits of the matter, by granting liberty to the petitioner to work out his remedy before the concerned Appellate Forum, which in turn would consider and decide the appeal on its own merits and in accordance with law, uninfluenced by any of the observations made in this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Commissioner of Customs (Preventive)
Office of Principal Commissioner of Customs
Preventive Commissionerate
Customs House, No.60, Rajaji Salai,
Chennai-600 001.

2. The Additional Director General
Ministry of Finance (Department of Revenue)
Directorate of Revenue Intelligence
No.25, Gopalakrishna (Iyer) Road,
T.Nagar, Chennai-600 017.

3. The Commissioner of Customs (Exports)
Customs House, No.60, Rajaji Salai,
Chennai-600 001.

+1 cc to M/s.C.Uma,Advocate Sr.No. 77466
+1 cc to Mr.T.Pramodkumar, Advocate Sr.No.77622

AKM/13.09.19/5P-6C/ W.P.No.26722 of 2019