IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09.04.2019

Coram

The Honourable DR.JUSTICE ANITA SUMANTH

W.P. Nos.33846 of 2018
& W.M.P.No.39312 of 2018

Wan Hai Lines India Pvt.Ltd
Ground Floor, Seethakathi Business Centre
684-690, Anna Salai,
Thousand Lights, Chennai 600 006.
Represented by it's Authorised Signatory
J Narayanan ....Petitioner

/Vs/

1.The Joint Commissioner of Customs-II
Group 6
Office of the Commissioner of Customs,
Customs House,
No.60, Rajaji Salai, Chennai-600001
2.Assistant Commissioner of Customs
Group 6
Office of the Commissioner of Customs,
Customs House,
No.60, Rajaji Salai, Chennai-600001 ....Respondents

P R A Y E R: WRIT PETITION under Article 226 of the Constitution in the nature of Certiorari calling for the records leading to passing of the Order in Original No.62318 of 2018 dated 20.03.2018, passed by the 1st respondent, quash the same and consequently set aside the letter dated 27.09.2018 vide F.No.S.Misc.162/2017-Gr 6 issued by the 2nd respondent.

For Petitioner : Mr.Dominic N David

For Respondents : Mr.Umesh Rao
Standing Counsel

O R D E R

Heard Mr.Dominic N David, leaned counsel for the petitioner and Mr.Mr.Umesh Rao, learned Standing Counsel for the respondents.

2. The petitioner seeks a writ of certiorari, calling for the records leading to passing of Order in Original dated 20.03.2018, passed by the Joint Commissioner of Customs, quash of the same and consequently setting aside of order dated 27.09.2018.

3. This writ petition falls within a very short compass. The petitioner is a private Management Company, which is the steamer agent of M/s.Wan Hai Lines(Singapore) Pte. Ltd carrying on business as a container owner/carrier. It was approached by a shipper to import certain cargo said to contain Ceiling fittings to a consignee in Chennai.

4. The petitioner issued a bill of lading and the cargo was shipped. Prior to the arrival of the consignment in the port of Chennai, the petitioner received a request from the Customs Broker on 19.11.2016 to move the container to the Container Freight Station for de-stuffing. Subsequent thereto, the consignment arrived in the port, and based on the price and description in the bill of lading, the petitioner effected a declaration to the effect that the cargo was 'Ceiling Fittings'.

5. There appears to have been certain investigations, in regard to misdeclaration of cargo and the representative of the petitioner was summoned and his statement recorded on 16.02.2017. Thereafter the petitioner did not receive any further show cause notice or communication from the respondents.

6. It is in the aforesaid circumstances that the petitioner received impugned letter dated 27.09.2018 passed by the Assistant Commissioner of Customs calling upon it to remit penalty of Rs.2,00,000/- as demanded by Order-in-Original dated 20.03.2018. It is the petitioners' specific case that the petitioner was not served with any order of the Joint Commissioner dated 20.03.2018. Thus, a request was made to Assistant Commissioner for a copy of the aforesaid order and it is pursuant to the aforesaid letter that the petitioner states that it has received a copy of the order of the Joint Commissioner dated 20.03.2018.

7. These facts are not disputed by Mr.Umesh Rao, learned Standing Counsel, who has taken notice for the respondents. This Court had granted time on three occasion to the respondents i.e. on 12.02.2019, 07.03.2019 & 02.04.2019 to file counter.

8. Today, however, learned counsel for the respondents states that counter has not been received and thus, he will proceed with the hearing of the matter. He also states categorically that since there is no dispute in regard to the facts averred in the writ petition, a counter may not be necessary in this matter. Thus, I proceed on the basis that the aforesaid narration of the facts is indeed true and reflects the events that have transpired in the matter.

9. The defence put forth by the learned counsel for the respondent, while admitting that no show cause notice was issued to the petitioner is, that no show cause notice need be issued. He relies on the provisions of Section 124 of the Act pointing out that show cause notice under that provision, has to be issued only in the case of imposition of penalty under that particular chapter itself. In the present case, according to him, the penalty has been issued under Section 148 which

falls under chapter XVII of the Act and thus according to him, no notice under Section 124 is necessary.

10. I disagree. The provisions of Section 148 read as follows:

> 148.Liability of agent appointed by the person in charge of a conveyance:
>
> (1) Where this Act requires anything to be done by the person in charge of a conveyance, it may be done on his behalf by his agent.
>
> (2) An agent appointed by the person in charge of a conveyance and any person who represents himself to any officer of customs as an agent of any such person in charge, and is accepted as such by that officer, shall be liable for the fulfillment in respect of the matter in question of all obligations imposed on such person in charge by or under this Act or any law for the time being in force, and to penalties and confiscations which may be incurred in respect of that matter.

11. The above is the provision under which the petitioner has been deemed as an agent in respect of the importer. The fallacy in the argument of the learned counsel is that he misunderstands Section 148 to be the provision under which the penalty is levied, whereas the levy of penalty is under Section 112(a) of the Customs Act and it was only the status of the petitioner as an agent, which is dealt with under Section 148. Thus, the placement of Section 148, in chapter XVII is of no relevance to the matter at all.

12. The principle of natural justice form the basis for the framing of a valid assessment. In the light of the admitted position that no show cause notice has been issued in this case, the impugned proceedings, in so far as it relates to the petitioner, are set aside. Show cause notice be issued to the petitioner in respect of the levy of penalty and appropriate orders be passed within a period of (8) weeks from the date of receipt of a copy of this order, after hearing the petitioner. This writ petition is allowed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Asst. Registrar

//True Copy//

Sub Asst. Registrar

To

1.The Joint Commissioner of Customs-II
Group 6
Office of the Commissioner of Customs,
Customs House,
No.60, Rajaji Salai, Chennai-600001

2.Assistant Commissioner of Customs
Group 6
Office of the Commissioner of Customs,
Customs House,
No.60, Rajaji Salai, Chennai-600001

+1 CC to Mr.P.GIRIDHAR Advocate SR.NO.35404
+1 CC to Mr. UMESH RAO, STANDING COUNSEL SR.NO.34499

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CO(RSV)
VC (08/06/2019)