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* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ **W.P.(C) 9173/2017 & CM Appl. No. 37505/2017 (stay)**

M/s. MADINA (UZ) IMPEX ..... Petitioner

Through Mr. Abhas Mishra & Ms. Aakriti, Advocates

versus

UNION OF INDIA & ANR. ..... Respondents

Through Mr. P.C.Yadav, Senior panel counsel with Ms.Neha Gupta, Advocates for Respondent No.1

Mr. Amit Bansal & Mr. Aman Rewaria, Advocates for Respondent No.2

\+ **W.P.(C) 2190/2018**

M/s. MAALVIKA IMPEX (INDIA), ... Petitioner

Through Mr. Abhas Mishra, Advocate

versus

UNION OF INDIA & ANR. ..... Respondents

Through Mr. Harpreet Singh, Senior standing counsel

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

ORDER

% **05.08.2019**

1. The short question in both these cases is whether the impugned show cause notices (SCNs) issued on 15th December, 2016 and 26th December

2016 under the Customs Act, 1962 (Act) to the two Petitioners ought not to be quashed on the ground of delay?

2. Both SCNs referred to inquiries made by the Department with the Banks of the Petitioners regarding foreign exchange remittances for exports made - in 2004 under 78 shipping bills in the case of M/s Madina (UZ) Impex and under 19 shipping bills between April, 2005 to May, 2007 in the case of M/s. Maalvika Impex (India). Both SCNs have been issued demanding the return of the drawback amount availed on the ground that in the previous SCNs these shipping bills were left out.

3. As far as W. P. (C) 9173/2017 is concerned, while directing notice to issue in the petition on 17th October, 2017 it was directed that no further proceedings shall take place pursuant to the impugned SCN.

4. As far as W. P. (C) 2190/2018 is concerned, while directing notice to issue in the petition on 9th March, 2018 this Court directed that the adjudication proceedings shall remain stayed till the next date of hearing.

5. The explanation offered in the counter affidavit filed in W.P.(C) 9173/2017 for the delay in issuing the impugned SCN was not found satisfactory by this Court. By an order dated 6th February, 2018 the Respondents were asked to file a further affidavit "why there is a quietus and silence for nearly nine years" after recording the statement of the Proprietor.

6. The said order also noted that counsel for the Respondent referred to Rule 16 (A) (2) of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 ('Drawback Rules') and submitted that there was no limitation prescribed thereunder. This Court noted that even if the Drawback Rules did not prescribe a period of limitation, a question would arise whether the impugned notices were issued within a reasonable period. The Respondents were granted an opportunity to file an affidavit within three weeks explaining why the proceedings initiated in 2007-2009 were not proceeded with for a period of nine years.

7. Pursuant to the above order passed in WP(C) No. 9173/2017 an additional affidavit was filed on 17th April, 2018 by the Respondents in which in Para C it is stated "the deponent humbly states that despite numerous efforts the reason for delay in issuance of show cause notice is not discernible from the records available in the office of the answering Respondents."

8. As far as WP(C) No.2190/2018 is concerned, in the counter affidavit filed on 11th April, 2018 there is no convincing explanation given for leaving out the 19 shipping bills in the earlier SCN. In other words, there is no explanation given by the Respondents, in either petition, for the delay in issuing the impugned SCNs.

9. Learned counsel for the Petitioners has placed reliance on the decision in ***Government of India v. Citedal Fine Pharmaceuticals 1989 (42) ELT 515 (SC)*** to urge that even if the Drawback Rules do not stipulate a period of limitation for issuing a notice, the action taken thereunder had to be within a

reasonable time. He also referred to other decisions in ***Padmini Exports v. Union of India 2012 (284) ELT 490 (Guj)*** and ***Pratibha Syntex Ltd. v. Union of India 2013 (287) ELT 290 (Guj)*** which are to the same effect.

10. Learned counsel for the Respondent referred to the decision of the Gujarat High Court in ***Dadri Inorganics Private Limited v. Commissioner of Customs 2010 (260) ELT 61 (Guj)*** which according to him supported his case. He also placed reliance on the decision of the Karnataka High Court in ***Gemini Dyeing & Printing Mills Limited v. Commissioner of Customs, Bangalore 2014 (304) ELT 51 (Kar).***

11. The latter decisions are distinguishable on facts. In the Karnataka case it was held on facts that no fresh SCN had been issued and that the impugned notice issued in that case was in continuation of the earlier SCN. Here, however, it is plain that a fresh SCN was issued with regard to the shipping bills for which a demand is sought to be raised.

12. The Court finds that the decision of the Supreme Court in ***State of Punjab v. Bhatinda District Co-operative Milk P. Union Limited 2007 (217) ELT 325 (SC)*** supports the case of the Petitioners. It holds that even where there is no prescribed period of limitation for completing an assessment, it does not mean that the power can be exercised at any time. It had to be exercised within a reasonable period and what is reasonable would depend on the nature of the statute, the rights and liabilities thereunder and other relevant factors.

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13. In the present case the delay of over nine years in WP(C) No. 9173/2017 and over five years in WP(C) No. 2190/2018 in issuing the SCNs have not been satisfactorily explained by the Respondents.

14. For the aforementioned reasons, this Court quashes both impugned SCNs. The writ petitions are allowed. The application is disposed of.

S. MURALIDHAR, J.

TALWANT SINGH, J.

AUGUST 05, 2019
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