BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.03.2020

CORAM
THE HONOURABLE **MR. JUSTICE M.DHANDAPANI**

W.P(MD).No.5975 of 2020
and
W.M.P(MD).Nos.5019 and 5173 of 2020

1. M/s.Cochin Air Cargo Clearing House,
   No.A6, First Floor, Kajamian Complex,
   TVS Tollgate, Tiruchirappalli 620 020
   rep., by its Branch In-Charge,
   Sabeer Ahamed Sayeed

2. Sabeer Ahamed Sayeed
3. E.Kalaivanan ... Petitioners

Vs.

1. The Commissioner of Customs, (Preventive)
   O/o.The Commissioner of Customs (Preventive)
   No.1, Williams Road, Cantonment,
   Tiruchirappalli 620 001.

2. The Assistant Commissioner of Customs,
   Air Intelligent Unit, Customs Airport,
   Tiruchirappalli 620 007. ... Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records of the proceedings of the first respondent against the petitioner and other petitioners in C.No.VIII/10/33/2020-Cus.Adjn/O.R.No.213(A)/2019-AIU, TRY vide Show Cause notice No.3/2020 (Commr) dated 25.02.2020 and quash the same.

For Petitioner : Mr.R.S.Sivaram
For Respondents : Mr.B.VijayKarthikeyan

O R D E R

By consent of both parties, this writ petition is taken up for final disposal at the stage of admission itself.

2. The petitioners herein are the agent of M/s.Cochin Air Cargo Customs Clearing Agent (Shipping clearing and Freight Forwarding Agent) is licensed Customs Brokerage Company Lic No.1/2012, having office near at International Airport, Shanmugam, Trivandram, Kerala.

3. During the course of the business, the petitioners' concern got an order for shipment of “Air inlet automobile spare parts” from a new customer named 'Swiss Global' having office at New Delhi and after receiving KYC form, GST No., certificate of import export code, proprietor PAN and Aadhar card, accepted the shipment through Tiruchirappalli Airport. After getting shipment bills number from the exporter, the petitioners received the goods at Trichy Airport and the same has been sent for customs clearance on 09.06.2019. but, the second respondent did not give customs clearance due to non availability of E-way bill. After getting E-way bill from the exporter, the petitioners sent the same to the second respondent. But the second respondent detained the goods on 10.06.2019.

4. Whileso, the second respondent, vide his letter dated 14.06.2019, sent letter to the consignor/exporter asking him to explain why the goods were over priced and further he sought additional information. Exporter had sent reply to the second respondent on 19.06.2019. The goods proposed to export is neither prohibited nor unlawful goods and it is only an automobile spare parts, which comes under general goods category However, the second respondent has issued summons to the petitioner to give explanation on 30.07.2019 and once again on 26.08.2019. The second petitioner appeared before the second respondent on 27.08.2019 and gave explanation in writing. Thereafter, the petitioners came to know that in order to harass the petitioners, the second respondent withhold the custom clearance. The second petitioner has filed a contempt petition against the first respondent and the same is still pending before this Court. Further in order to harass the petitioners, the second respondent called for official enquiry several times and aggrieved the hasty decision of the second respondent, the petitioners filed a writ petition before this Court for a Mandamus, not to harass the petitioners and this Court disposed of the writ petition on 13.12.2019 with a direction to complete the investigation against the petitioners within a period of one month from the date of receipt of a copy of that order. As per the direction of this Court, the respondent has to conclude the investigation on or before 17.01.2020. but the present impugned show cause notice was issued on 25.02.2020. hence, the petitioner has come forward before this Court with the present writ petition.

5. The learned counsel appearing for the petitioners submit that in an earlier occasion the petitioners challenged the illegal action of the respondents by way of contempt petition as well as the writ petition. However, in order to wreck vengeance, the present impugned show cause notice was issued. Section 147(2) of the Customs Act, 1962 is applicable to the exporter and not applicable to the agent. The petitioners are the agent and they are nothing to do with the exporters obligations. However, the respondents issued time barred show-cause notice, without jurisdiction.

6. The learned counsel appearing for the petitioners further submit that the time to reply the show cause notice was expired.

7. In view of the above, the petitioners are permitted to canvass all those points before the adjudicating authority, by way of proper reply, on or before 31.03.2020, and thereafter, the 1st respondent shall complete the adjudication proceedings in respect of show-cause notice dated 25.02.2020 and pass appropriate order, in accordance with law, on or before 31.04.2020.

8. Accordingly, the Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Rmk

To

1. The Commissioner of Customs, (Preventive)
   O/o.The Commissioner of Customs (Preventive)
   No.1, Williams Road, Cantonment,
   Tiruchirappalli 620 001.

2. The Assistant Commissioner of Customs,
   Air Intelligent Unit, Customs Airport,
   Tiruchirappalli 620 007.

+ 1 CC to Mr.R.S.Sivaram, Advocate SR.No.12990
+ 1 CC to Mr.B.VijayKarthikeyan, Advocate SR.No.12968

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24.03.2020

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