BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 13.08.2020
CORAM
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)Nos.6874, 6876, 6877, 6884, 6894, 6896, 6898 & 6900 of 2020
and
W.M.P.(MD)Nos.6285, 6286, 6287,6288,6289,6290,6291,6293,6295,6300,6302,6303,6314,6315,6316, 6317,6318,6319,6320,6321,6322,6326,6327 and 6328 of 2020

M/s.Sakthi International,
71-B, Sirangkuppam Main Road,
Sirangkuppam,
Panikankuppam (PO),
Panruti-607 106.
Represented by its partner
Mr.C.S.Thirugnanasambandan ... Petitioner in all WPs

Vs.

1.The Assistant Commissioner of Customs
(Advance Authorization),
Customs House, New Harbour Estate,
Tuticorin - 628 001.

2.The Assistant Commissioner of Customs,
Customs Division, 60, Mohan Singh Street,
Cuddalore - 607 003.

3.The Assistant Commissioner of Customs (ARC),
Customs House, New Harbour Estate,
Tuticorin - 628 001.

4.The Branch Manager, Lakshmi Vilas Bank,
Panruti Branch, No.25B, Thanjavur-Kumbakonam Main Road,
Kamaraj Nagar, Panruti - 607106.
... Respondents in all WPs

Prayer in WP(MD)No.6874 OF 2020: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records calling for the procedure relating to the proceedings in order in original No.106/2019 dated 18.03.2019 in file C.No.VIII/16/09/2018-DEEC/AA, File No.68/29-AA issued by the first respondent and the consequential order issued in Detention Notice C.No.VIIII/48/283/2019-Arrears dated 20.08.2019 issued by the third respondent and to quash the same.

Prayer in WP(MD).NO. 6876 of 2020 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for the records calling for the proceedings relating to the proceedings in order in original No.104/2019 dated 18.3.2019 file in file C.No.VIII/16/09/2018-DEEC/AA File No.66/42-AA issued by the 1st respondent and the consequential order issued in Detention notice detention Notice C.No.VIII/48/281/2019-Arrers dated 21.8.2019 issued by the 3rd respondent and to quash the same.

Prayer in WP(MD). NO. 6877 of 2020 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorari, calling for the records calling for the proceedings relating to the proceedings in order in original No. 103/2019 dated 21.03.2019 in file C.No.VIII/16/09/2018-DEEC/AA, File No. 69/99-AA issued by the 1st respondent and the consequential order issued in Detention notice Detention Notice C.No. VIIII/48/280/2019- Arrears dated 21.08.2019 issued by the 3rd respondent and to quash the same.

Prayer in WP(MD).NO. 6884 of 2020 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorari, calling for the records calling for the proceedings relating to the proceedings in order in original No. 133/2019 dated 21.03.2019 in file C.No.VIII/16/09/2018-DEEC/AA, File No. 65/79-AA issued by the 1st respondent and the consequential order issued in Detention notice Detention Notice C.No. VIIII/48/289/2019- Arrears dated 20.08.2019 issued by the 3rd respondent and to quash the same.

Prayer in WP(MD). NO.6894 of 2020 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorari, calling for the records calling for the proceedings relating to the proceedings in order in original No. 101/2019 dated 18.03.2019 file in file C.No.VIII/16/09/2018-DEEC/AA, File No. 68/16-AA issued by the 1st respondent and the consequential order issued in Detention notice purportedly issued by the 3rd respondent and quash the same.

Prayer in WP(MD).NO. 6896 of 2020 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorari, calling for the records calling for the proceedings relating to the proceedings in order in original No. 99/2019 dated

18.03.2019 in file C.No.VIII/16/09/2018-DEEC/AA, File No. 67/66-AA issued by the 1st respondent and the consequential order issued in Detention notice Detention Notice C.No. VIIII/48/276/2019- Arrears dated 24.10.2019 issued by the 3rd respondent and to quash the same.

Prayer in WP(MD) NO. 6898 of 2020 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorari, calling for the records calling for the proceedings relating to the proceedings in order in original No. 102/2019 dated 21.03.2019 in file C.No.VIII/16/09/2018-DEEC/AA, File No. 68/28-AA issued by the 1st respondent and the consequential order issued in Detention notice Detention Notice C.No. VIIII/48/279/2019- Arrears dated 24.10.2019 issued by the 3rd respondent and to quash the same.

Prayer in WP(MD).NO. 6900 of 2020 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorari, calling for the records calling for the proceedings relating to the proceedings in order in original No. 100/2019 dated 18.03.2019 in file C.No.VIII/16/09/2018-DEEC/AA, File No. 66/90-AA issued by the 1st respondent and the consequential order issued in Detention notice Detention Notice C.No. VIIII/48/277/2019- Arrears dated 23.09.2019 issued by the 3rd respondent and to quash the same.

For Petitioner : Mr.N.Viswanathan
(in all W.Ps.)

For R1 to R3 : Mr.Aravindan
(in all W.Ps.)

COMMON ORDER

Heard the learned counsel appearing for the writ petitioner and the learned standing counsel appearing for the respondents.

2.These writ petitions, though pertain to different subjects, can be disposed of by answering a single question of law that has been raised by the learned counsel appearing for the petitioner.

3.The petitioner in all these writ petitions is one and the same. The writ petitioner had imported certain goods in the year 2016 subject to certain export obligations. Export obligations were to be fulfilled within 18 months. The petitioner had executed the relevant undertaking in this regard. While so, the first respondent issued notices dated 12.11.2018 informing the petitioner that the export obligation period for the licence in question had already expired. The petitioner was called upon to produce the following documents:-

(I) Export Obligation Discharge Certificate (EODC) issued by DGFT or certificate towards the extension of EO period granted by JDGFT along with ANF-4F and supporting documents.

(II) If applied for EODC, extension of EO period and clubbing, acknowledgment / authorization number allotted by DGFT.

4.It was further made clear in the said notices that if the export obligation has not been fulfilled, the petitioner will have to pay differential duty with interest immediately. Since the petitioner did not respond to the notices and also the hearing notices, the petitioner was directed to pay the amounts mentioned in the impugned orders. They are under challenge in these writ petitions.

5.Though the petitioner's counsel raised very many contentions, he primarily argued that the statutory requirement set out in Section 153 of the Customs Act has not been fulfilled. His specific stand is that the petitioner did not receive the notices referred to in the impugned orders. He therefore wanted this Court to quash the impugned orders on the ground of violation of the principles of natural justice and remit the same to the first respondent for disposal in accordance with law.

6.This prayer is strongly and vehemently opposed by the learned Standing Counsel appearing for the respondents. The respondents have filed a detailed counter affidavit. They have also filed the typed set of papers. The learned Standing Counsel would contend that the orders impugned in these writ petitions cannot be faulted. According to him, they are certainly not vulnerable on the ground of violation of the principles of natural justice.

7.Materials have been placed before me to indicate that the notices were sent through speed post. The learned Standing Counsel draws my attention not only to Section 27 of the General Clauses Act, 1897, but also to Section 153 (3) of the Customs Act and called upon me to apply the presumption set out therein. Section 153 (3) of the Customs Act reads as under:-

> 153(3): When such order, decision, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by

such post in transit unless the contrary is proved.

8.The respondents have certainly satisfied me that the notices were sent through speed post. Now the question is whether the presumption set out in Section 153(3) has been rebutted or not.

9.The petitioner's specific case is that they were originally having their registered office at the address bearing No.536, Old Kumbakonam Road, Panikankuppam PO, Panruti Taluk. They later shifted their address to the new premises bearing No.7/1-B, Sirangkuppam Main Road, Panikankuppam (PO), Panrutti-607 106. This shifting had taken place in May 2017. In fact, some contemporaneous materials have been enclosed in the affidavit that this shifting had actually taken place.

10.I see no reason to doubt this statement made by the petitioner herein in the form of an affidavit. Admittedly, the petitioner did not intimate the respondents about the shifting of their registered office. When I posed a specific question in this regard, the learned counsel appearing for the petitioner drew my attention to Section 153(1) of the Customs Act which enables the Authority to serve the notice not only on the petitioner but also on his customs broker. The imports in this case have been taken place only through an authorised customs house agent namely Zion Logistics.

11.The petitioner's counsel states that the first respondent could have as well given notice to the said broker and that would have been in total compliance of the statutory requirements set out in Section 153(1) of the Customs Act. Admittedly, in this case, the Authority has not served the notice on the petitioner's customs house agent. Section 153(3) of the Customs Act is not a conclusive presumption. It is rebuttable in nature. The petitioner had clearly averred that they had not received the notices issued by the first respondent. They have also stated that they had shifted the registered office way back in May 2017. The notices in question came to be issued only in November 2019.

12.The petitioner's counsel also drew my attention to the fact that Section 153 of the Customs Act had undergone an amendment with effect from 29.03.2018. Before amendment, the statute contemplated tendering the order, decision, summons or notice or sending it by registered post. Post amendment, the statute speaks of sending the aforesaid communications through registered post or speed post or courier with acknowledgment due. In this case, it is not confirmed as to whether the notice was sent with acknowledgment due. If that be so, the first respondent ought to be in a position to produce the signed acknowledgment card. If the cover had returned, the returned cover should be produced. In this case, neither the returned cover nor the signed acknowledgment had been produced before me. Therefore, I hold that the presumption set out in Section 153(3) of the Customs Act has been rebutted.

13.The petitioner's counsel took me to quite a few decisions to drive home his points that when the statute specifically contemplates issuance of notice in a particular manner, that mode ought to be complied with. In this case, I hold that the first respondent has not effected service of the notices in the manner contemplated by Section 153(1) of the Customs Act, 1962. Now the question is whether on this ground the order has to be quashed.

14.The learned Standing Counsel strongly contended that when they had admitted in the affidavit filed in support of the writ petition, the impugned orders were served on them by another authority some time in November 2019. He states that nothing prevented the petitioner from challenging the impugned orders immediately thereafter. According to the learned Standing Counsel, the impugned orders were passed by invoking Section 28 of the Customs Act, 1962. Since the said order is appealable, the petitioner could have filed an appeal before the Appellate Authority within 60 days. An Appellate Authority could have condoned the delay by another period of 60 more days. In this case, the petitioner has chosen to move this Court after the limitation period had totally expired, when the petitioner's right to file an appeal has been extinguished by operation of the limitation. According to the learned Standing Counsel, the Writ Court will not be justified in interfering.

15.I find the said contention appears to be rather formidable. But then, the petitioner's counsel drew my attention to the decision of the Hon'ble Full Bench of the High Court of Andra Pradesh reported in ***2018 (361) E.L.T. 22 (Electronics Corporation of India Ltd., Vs. Union of India)***. The question that arose before the Hon'ble Full Bench was whether the Writ Petition under Article 226 of the Constitution of India would lie even after the statutory remedy or appeal as provided in Statute is extinguished. The Hon'ble Full Bench answered the question in the following terms:-

> "(1) Question No.1 is answered in negative by observing that the limitation provided under Section 35 of the Act cannot be condoned in filing the appeal beyond the period of 30 days as provided by the proviso nor the appeal can be filed

beyond the period of 90 days.

(2) The second question is answered in negative to the extent that the petition under Article 226 of the Constitution would not lie for the purpose of condonation of delay in filing the appeal.

(3) On the third question, the answer is in affirmative, but with the clarification that

(A) the petition under Article 226 of the Constitution can be preferred for challenging the order passed by the original adjudicating authority in following circumstances that

(A.1) The authority has passed the order without jurisdiction and by assuming jurisdiction which there exist none, or

(A.2) Has exercised the power in excess of the jurisdiction and by overstepping or crossing the limits of jurisdiction, or

(A.3) Has acted in flagrant disregard to law or Rules or procedure or acted in violation of principles of natural justice where no procedure is specified.

(B) Resultantly, there is failure of justice or it has resulted into gross injustice."

16.The learned counsel appearing for the petitioner states that this decision of the Hon'ble Full Bench of the Andhra Pradesh High Court was followed in quite a few decisions of the Madras High Court.

17.This Writ Petition was of-course filed only in 2nd week of June 2020. But I have to take note of the fact that Pandemic struck the Country in the 3rd week of March 2020 itself. In the affidavit filed in support of the writ petition, the petitioner has given his explanation as to why he could not move the Court immediately after the impugned orders were served on the petitioner in November 2019.

18.I accept the explanation set out by the petitioner in the affidavit filed in support of the Writ Petition. What impels me to interfere is the fact that the petitioner appears to have partially complied with the export obligations undertaken by him. But the impugned order has proceeded on the basis that the petitioner has not at all complied with the export obligation. In other words, the first respondent has assumed that there has been zero compliance of the export obligation. Thus, if I confirm the order as such, there would certainly be miscarriage of justice. The petitioner can be called upon to pay differential duty to the extent, there has been non compliance of the export obligations. Where to the extent there has been compliance, the petitioner has to be given due credit. Since the impugned orders assume that the petitioner has not at all complied with the export obligations, if I do not interfere, there would certainly be miscarriage of justice. It is this impels me to interfere on the ground of violation of principles of natural justice. The orders impugned in these writ petitions stand quashed. The matters are remitted to the file of the first respondent. Consequently, the attachment or freezing of the petitioner's bank account is also raised.

19.The Writ Petitions are allowed with the following directions:-

(I) the petitioners shall respond to the notices now enclosed in the type set of papers by furnishing all the relevant details.

(II) this shall be done within a period of three weeks from the date of receipt of a copy of this order.

(III) thereupon, the first respondent shall issue fresh notices and after holding personal hearing, pass orders afresh in accordance with law.

No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

rmi

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Assistant Commissioner of Customs
(Advance Authorization),
Customs House, New Harbour Estate,
Tuticorin - 628 001.

2.The Assistant Commissioner of Customs,
Customs Division, 60, Mohan Singh Street,
Cuddalore - 607 003.

3.The Assistant Commissioner of Customs (ARC),
Customs House, New Harbour Estate,
Tuticorin - 628 001.

4.The Branch Manager, Lakshmi Vilas Bank,
Panruti Branch, No.25B, Thanjavur-Kumbakonam Main Road,
Kamaraj Nagar, Panruti - 607106.

+1 CC to M/s.R. ARAVINDAN, Advocate (SR-14062[F] dated 14/08/2020)

+8 CC to M/s.N. VISWANATHAN, Advocate (SR-14074 to 14081 [F] dated 14/08/2020)

W.P.(MD)Nos.6874, 6876, 6877, 6884, 6894, 6896, 6898 & 6900 of 2020

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