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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 26th August, 2020

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W.P.(C) 5561/2020

NATRAJH RAMAKRISHNA

..... Petitioner

Through: Ms.Kanupriya Bhargava, Adv. with
Ms.Divya Bhardwaj, Adv.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: None

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE PRATEEK JALAN

JUDGMENT

: D.N. PATEL, Chief Justice (Oral)

Proceedings in the matter have been conducted through video conferencing.

C.Ms.No.20073-75/2020 (exemptions)

Allowed, subject to all just exceptions.

The applications are disposed of.

W.P.(C) No.5561/2020

1. This writ petition has been preferred with the following prayers:-

“a. To issue a Writ of Prohibition, or any other appropriate Writ, directing the Respondent No. 2 to 7, and prohibit them to take any action against the Impugned Notice dated 26.06.2020.

b. To issue a writ of Certiorari, or any other appropriate Writ, calling for the records and quashing the Impugned Notice

W.P.(C) No.5561/2020

Page 1 of 5

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issued by Respondent No. 3 as without jurisdiction, conclusive and contrary to the provisions of the Customs Act; and

c. May also be pleased to pass such other consequential orders or grant such other consequential relief, as this Hon'ble Court may deem fit and proper in the facts and circumstances of this case.”

2. Looking to the facts and circumstances of the case, it appears that the petitioner, who was the Chief Operating Officer of M/s KPMG during the period in dispute, has challenged a show cause notice dated 26th June, 2020 issued to him by the Customs authorities (Annexure P-1 to the memo of this writ petition). The respondents have invited reply of the petitioner to the said show cause notice, as stated in para-10 therein.
3. Much has been argued by the learned counsel for the petitioner about the lack of jurisdiction on the part of the respondents. We are not in agreement with this contention, the respondents have the power, jurisdiction and authority to issue the aforesaid show cause notice for the alleged breach of Foreign Trade Policy and wrongly availing the benefits under 'Served from India Scheme' (SFIS). The objections articulated by learned counsel for the petitioner are of a nature which can be taken before the authorities, and do not call for a departure from the general principle that a writ petition will not be entertained against issuance of a show cause notice.
4. Learned counsel appearing for the petitioner has also argued on merits that there is no violation of the Foreign Trade Policy nor there is a misuse of SFIS scheme or of SFIS credits. The licenses were issued by DGFT which are valid even till today, as submitted by the counsel for the petitioner.
5. As the show cause notice is yet to be decided or adjudicated upon by

the concerned respondents authorities, we are not expressing any opinion on the merits of the case. The petitioner has to give reply of the show cause notice to the concerned respondent authorities and if the respondents decide any issue against the petitioner, the petitioner is not remediless.

6. Suffice it is to say that this is a premature writ petition. The Supreme Court in the case of ***Union of India and Another vs. Guwahati Carbon Ltd. (2012) 11 SCC 651*** held that though Article 226 of the Constitution of India confers vast powers on High Court, such powers can only be exercised in those cases where the statutory authority has not acted in accordance with law or when an order has been passed in total violation of principles of natural justice. The relevant para of the said judgment reads as under:-

“4. We reiterate that the High Court, under Article 226 of the Constitution of India, has vast powers as this Court has under Article 32 of the Constitution of India, but such powers can only be exercised in those cases where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice.”
(emphasis supplied)

7. The Hon’ble Supreme Court in ***Union of India and Ors. vs. Coastal Container Transporters Association and Ors. 2019 SCC Online SC 274*** in para 19 has held as under:-

“19. the High Court has committed error in entertaining the writ petition under Article 226 of Constitution of India at the stage of show cause notices. Though there is no bar as such for entertaining the writ petitions at the stage of show cause notice, but it is settled by number of decisions of this Court, where writ petitions can be entertained at the show cause

notice stage. Neither it is a case of lack of jurisdiction nor any violation of principles of natural justice is alleged so as to entertain the writ petition at the stage of notice. High Court ought not to have entertained the writ petition, more so, when against the final orders appeal lies to this Court.”
(emphasis supplied)

8. The Hon’ble Supreme Court in **Commissioner of Central Excise, Haldia Vs. Krishna Wax (P) Ltd., (2019) SCC Online SC 1470** reiterated the same view and held as under:-

*“12. It has been laid down by this Court that the excise law is a complete code in itself and it would normally not be appropriate for a Writ Court to entertain a petition Under Article 226 of the Constitution and that the concerned person must first raise all the objections before the authority who had issued a show cause notice and the redressal in terms of the existing provisions of the law could be taken resort to if an adverse order was passed against such person. For example in **Union of India and Anr. v. Guwahati Carbon Limited** MANU/SC/1256/2012 : (2012) 11 SCC 651, it was concluded; “The Excise Law is a complete code in order to seek redress in excise matters and hence may not be appropriate for the writ court to entertain a petition Under Article 226 of the Constitution”, while in **Malladi Drugs and Pharma Ltd. v. Union of India** MANU/SC/0407/2004 : 2004 (166) ELT 153 (S.C.), it was observed:*

“...The High Court, has, by the impugned judgment held that the Appellant should first raise all the objections before the Authority who have issued the show cause notice and in case any adverse order is passed against the Appellant, then liberty has been granted to approach the High Court...

...in our view, the High Court was absolutely right in dismissing the writ petition against a mere show cause notice.”

It is thus well settled that writ petition should normally not be entertained against mere issuance of show cause notice. In the present case no show cause notice was even issued when the High Court had initially entertained the petition and directed the Department to prima facie consider whether there was material to proceed with the matter.”

(emphasis supplied)

9. In view of the above, without entering into the merits of this case, as this is a premature writ petition, we are not inclined to give any relief to the petitioner. The petitioner may file a reply of the show cause notice and the concerned respondents authorities shall adjudicate upon the same in accordance with law, rules, regulations and government policies applicable to the facts of the case and after giving adequate opportunity of being heard to the petitioner.

10. With these observations, this writ petition is dismissed.

C.M.No.20072/2020(stay)

In view of the final order passed in the writ petition, this application stands disposed of.

CHIEF JUSTICE

PRATEEK JALAN, J

AUGUST 26, 2020

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