IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.10276 to 10281 of 2011
and
M.P.No.1 of 2011 (In each case)

1. M/s.R.K.K.R.Steel,
Rep., by its Director, Joseph Philip,
No.403, T.H.Road, Thiruvottiyur,
Chennai.

2. Joseph Philip,
Director, M/s.R.K.K.R.Steel,
No.403, T.H.Road,
Thiruvottiyur, Chennai.

...Petitioner 1 & 2 in all W.P.s

3. Rajiv Raji,
Director, M/s.R.K.K.R.Steel,
No.403, T.H.Road,
Thiruvottiyur, Chennai.

.. 3rd Petitioner in W.P.No.10276 & 10277 of 2011

-vs-

1. The Central Board of Excise and Customs,
Government of India,
North Block, New Delhi.

2. The Commissioner of Customs, Port Import,
No.33, Rajaji Salai,
Custom House, Chennai.

3. The Commissioner of Customs,
Ice House, EDC Complex,
Patto Plaza, Panaji, Goa.

...Respondents 1,2 & 3 in all W.P.s

4. The Additional Director General,
   Directorate of Revenue Intelligence,
   Mumbai Zonal Unit, UTI House,
   No.13, Vithaldas Thackersey Marg.,
   New Marine Lines, Mumbai-20.

..4th Respondent in W.P.No.10276 & 10277 of 2011

4. The Additional Director General,
   Directorate of Revenue Intelligence,
   Mumbai Zonal Unit, UTI House,
   No.16, Arthur Bunder Road.,
   Hotal Waldorf Building
   Colaba, Mumbai-5.

..4th Respondent in W.P.No.10278, 10279, 10280 & 10281 of 2011

Prayer in W.P.No.10276 of 2011:

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records relating to the show cause notice No.F.No.DRI/MZU/GRU/INV-02/RKKR/2005/01624 dated 26.09.2006 issued by the 4th respondent and to quash the same.

WP No.10277 of 2011:

Declaring the Notification No. 41/07-Cus.(NT) dated 04.05.2007 issued by the 1st respondent as without authority of law in so far as the petitioner is concerned

WP No.10278 of 2011:

calling for the records relating to the show cause notice No. F.No. DRI/MZU/GRU/INV-06/Karthik/2005/1516 dated 17.07.2006 issued by the 4th respondent and to quash the same as without authority and without jurisdiction

WP No.10279 of 2011:

to declare the Notification No. 45/07-Cus.(NT) dated 04.05.2007 issued by the 1st respondent as without authority of law and without jurisdiction

WP No.10280 of 2011:

calling for the records relating to the show cause notice No. F.No. DRI/MZU/GRU/INV-02 21st Century/2005/1520 dated 31.05.2006 issued by the 4th respondent and to quash the same as without authority and without jurisdiction

WP No.10281 of 2011:

to declare the Notification No.101/06-Cus.(NT) dated 05.09.2006 issued by the 1st respondent as without authority of law and without jurisdiction

For Petitioners : Mr.M.A.Mudimannan
(In all W.Ps.)

For RR1 to 3 : Ms.R.Hemalatha,
(In all W.Ps.) Senior Standing Counsel

For R4 : Mr.V.Sundareswaran,
(In all W.Ps.) Senior Panel Counsel

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COMMON ORDER

W.P.Nos.10276, 10278 and 10280 of 2011 are filed challenging the show cause notices dated 26.09.2006, 17.07.2006 and 31.05.2006 respectively.

2.W.P.Nos.10277, 10279 & 10281 of 2011 are filed challenging the Notifications dated 04.05.2007, 04.05.2007 and 05.09.2006 issued by the first respondent, in exercise of the powers conferred by sub-Section (1) of Section 4 and sub-Section (1) of Section 5 of the Customs Act, 1962 (52 of 1962) (hereinafter referred to as "the Act").

3.A writ against a show cause notice may be entertained, only if the show cause notice is issued by an incompetent authority having no jurisdiction or allegations of malafieds are raised. If allegations of malafieds are raised, then the authority against whom such an allegation is raised is to be impleaded as a party respondent in the writ proceedings in his personal capacity. Thus a writ petition, against a show cause notice, is not entertainable in a routine manner. Only in the event of raising the ground of jurisdiction, which is to be substantiated with reference to the statutes or rules in force, then alone such writ is entertainable.

4.In these writ petitions, the petitioners have raised the preliminary ground of jurisdiction by stating that the show cause notices were not issued by the jurisdictional officer and therefore, the show cause notices are without jurisdiction. To substantiate the preliminary ground of sustainability of the impugned show cause notices, the learned counsel for the petitioners strenuously contended that the Act contemplates 'proper officer'. The proper officer, in the present case, is the Commissioner of Customs, Chennai.

5.The first petitioner, M/s.R.K.K.R.Steel, is a company and they are engaged in the manufacturing process at Chennai and their registration is also in Chennai. Thus, the Commissioner of Customs at Chennai is the competent officer, having jurisdiction over the petitioner-company. The impugned show cause notices are issued by the Deputy Director, Directorate of Revenue Intelligence, Regional Unit, Goa, who has no jurisdiction to issue such show cause notices, as far as the petitioner-company is concerned. Thus, the show cause notices are liable to be set aside.

6.The learned counsel for the petitioners contended that when the Act contemplates, 'proper officer' shall issue show cause notice, in the present case, the incompetent authority, having no jurisdiction, issued the show cause notices and the notifications conferring power are also in violation of the specific provisions under the Act that the proper officer shall issue notice. Thus, all the writ petitions are to be allowed. In support of the said grounds raised, the learned counsel for the petitioners, relied on the judgment of the Hon'ble Supreme Court of India, in the case of Commissioner of Customs vs. Sayed Ali reported in 2011 (265) E.L.T. 17 (SC). The Apex Court made an observation in paragraph 14, which reads as follows:-

> "14.From a conjoint reading of Sections 2 (34) and 28 of the Act, it is manifest that only such a customs officer who has been assigned the specific functions of assessment and re-assessment of duty in the jurisdictional area where the import concerned has been affected, by either the Board or the Commissioner of Customs, in terms of Section 2(34) of the Act is competent to issue notice under Section 28 of the Act. Any other reading of Section 28 would render the provisions of Section 2(34) of the Act otiose in as much as the test contemplated under Section 2 (34) of the Act is that of specific conferment of such functions. Moreover, if the Revenue's contention that once territorial jurisdiction is conferred, the Collector of Customs (Preventive) becomes a "proper officer" in terms of Section 28 of the Act is accepted, it would lead to a situation of utter chaos and confusion, in as much as all officers of customs, in a particular area be it under the Collectorate of Customs (Imports) or the Preventive Collectorate, would be "proper officers". In our view therefore, it is only the officers of customs, who are assigned the functions of assessment, which of course, would include re-assessment, working under the jurisdictional Collectorate within whose jurisdiction the bills of entry or baggage declarations had been filed and the consignments had been cleared for home consumption, will have the jurisdiction to issue notice under Section 28

of the Act."

7.The Apex Court of India considered the definition of the term 'proper officer' contemplated under Section 2(34) of the Act. The learned counsel for the petitioner also referred to Section 28(1)(a) wherein also, the term used is 'proper officer'. Relying on the rulings of the Hon'ble Supreme Court, in the case of Sayed Ali (supra), the learned counsel for the petitioner is of an opinion that the proper officer is the language adopted in the Act and therefore, all show cause notices are to be issued by the proper officer and who is the proper officer is defined under the Act and the Hon'ble Supreme Court also confirmed that the proper officer is the officer, who is having jurisdiction over the person concerned.

8.The learned counsel for the petitioners relied on the subsequent and recent judgment of the Hon'ble Supreme Court in the case of M/s.Canon India Private Limited vs. Commissioner of Customs reported in 2021 (3) TMI 384 (SC) wherein, the interpretation for the words 'proper officer' ruled by the Hon'ble Supreme Court in the case of Syed Ali (supra) was followed and affirmed. The Hon'ble Supreme Court, by referring to the decision in the case of Syed Ali (supra), held that the 'proper officer' is the officer having jurisdiction over the person concerned and therefore, the law regarding the interpretation 'proper officer' is settled by the Hon'ble Supreme Court and admittedly in the present case, the jurisdictional officer has not issued the show cause notices and in turn, the officer at Goa has issued the impugned show cause notices. Thus, the notices are liable to be quashed.

9.The respective learned counsels appearing on behalf of the respondents disputed the said contentions raised on behalf of the petitioner.

10.The learned Senior Panel Counsel for the fourth respondent made a submission that the ratio laid down by the Hon'ble Supreme Court is inapplicable with reference to the facts and circumstances of the present case on hand. The Hon'ble Supreme Court, no doubt, interpreted the term 'proper officer' as defined under Section 2(34) of the Act . The Hon'ble Supreme Court, in that particular case, considered that the impugned order was not passed by the proper officer and therefore, allowed the petition against the Department. Thus, the details referred to by the petitioners are of no avail to them and in the present case, the first respondent issued specific notifications by invoking the powers under sub-Section (1) of Section 4 and sub-Section (1) of Section 5 of the Act, and such power shall be conferred to the officers and on conferment of such powers, the officer in favour of whom such power is concerned, became 'the proper officer'. Thus, the proper officer in the present case is the officer, who issued the show cause notices at Goa and certainly not the officer at Chennai. Once the provisions of the Act are invoked and the power is conferred on a particular officer, such officer became the proper officer for the purpose of initiation of action and thus, there is no illegality or irregularity and the show cause notices have been issued by an officer having jurisdiction and thus, the writ petitions are liable to be dismissed.

11.The learned counsels for the respondents reiterated that the writ petitions are filed challenging the show cause notices and therefore, the petitioners have to defend their case by submitting their explanations/objection as well as the documents. At this stage, Court need not adjudicate the merits of the case and therefore, the respondents may be allowed to continue the proceedings by following the procedures contemplated under law.

12.Let us now consider the impugned notifications issued by the first respondent. The impugned notification No.41/2007 dated 04.05.2007 reads that "in exercise of the powers conferred by sub-Section (1) of Section 4 and sub-Section (1) of Section 5 of the Customs Act, 1962 (52 of 1962), the Central Board of Excise and Customs, hereby appoints the Commissioner of Customs, Goa and authorises him to exercise the powers and discharge the duties conferred or imposed on the Commissioner of Customs, Port Imports, Chennai for the purposes of adjudicating the matters relating to show cause notice pertaining to M/s.RKKR Steels Ltd., 403, TH Road, Chennai and others issued vide F.No.DRI/MZU/GRU/INV-02/RKKR/2005/1637 dated 26.09.2006, by the Additional Director General, Directorate of Revenue Intelligence, Mumbai Zonal Unit, UTI House 13, Vithal Das Thackersey Marg, New Marine Lines, Mumbai-20"

13.Section 4 of the Act contemplates 'appointment of officers of customs'. Section 4(1) states that the Board may appoint such persons as it thinks fit to be officers of customs. Section 5 provides 'powers of officers of customs'. Section 5 (1) enumerates that subject to such conditions and limitation as the Board may impose, an officer of customs may exercise the powers and discharge the duties conferred and imposed on him under the Act.

14.Cogent reading of the provisions of the Act would reveal that the Board, at its discretion, may appoint such persons as it thinks fit to be officers of customs. Under Section 5, the officers of customs appointed by the Board under Section 4(1) of the Act may exercise the powers and discharge the duties conferred or imposed on him under the Act. Thus, any officer of customs appointed under Section 4(1) is empowered to exercise the powers of officers of customs under Section 5 of the Act.

15.In this backdrop, let us now consider the definition for 'proper officer' enumerated under Section 2(34) of the Act. The proper officer is defined as “in relation to any functions to be performed under the Act, means the Officer of Customs, who is assigned those functions by the Board or the Commissioner of Customs. Thus, the proper officer is defined so as to include the officer of customs, who is assigned those functions by the Board. In the present case, by invoking the powers under Section 4(1) of the Act, the Board conferred powers to the Commissioner of Central Excise, Goa and authorises him to exercise the powers and discharge the duties conferred or imposed on the Commissioner of Customs, Port Imports, Chennai for the purposes of adjudicating the matters relating to show cause notice. Therefore, it is unambiguous that the Board appointed the Commissioner of Central Excise, Goa as a proper officer under Section 4(1) and the said Commissioner of Central Excise, Goa is empowered to exercise powers of the officers of customs under Section 5 and with reference to the definition of proper officer under Section 2(34) of the Act. Therefore, there is no ambiguity in respect of the powers exercised in the present case. The judgments cited by the learned counsel for the petitioner were not related to the conferment of powers by the Board under Section 4(1) and 5 of the Act. The Hon'ble Supreme Court interpreted the word 'proper officer' and as per the definition under Section 2(34) of the Act, 'proper officer' means the officer having jurisdiction over the concerned person. However, in the event of exercising the powers under Section 4 (1), if the Board appoints any other officer as an officer of customs, then such an officer becomes the proper officer within the definition under Section 2(34) of the Act, who in turn is empowered to exercise the powers of officers of customs under Section 5 of the Act.

16.This being the constructive interpretation of the provisions of the Act, this Court is of the considered opinion that the judgments cited by the petitioners are not with reference to Sections 4 and 5 of the Act and thus, the interpretation offered by the learned counsel for the petitioners stands rejected.

17.As far as the show cause notices are concerned, the merits are to be adjudicated by the competent authority/the respondent. High Court cannot adjudicate the disputed facts with reference to the documents and evidences to be produced by the respective parties. Thus, the petitioner has to submit their explanations/objections, if any, along with the documents and evidences to the respondents enabling them to consider the same and pass orders by following the procedures as contemplated and by affording opportunity to the writ petitioners. Such an exercise is to be done as expeditiously as possible. In view of the fact that the jurisdiction point raised by the petitioner fails, as the facts and circumstances of the case decided by the Hon'ble Supreme Court are not connected with the grounds raised in the present writ petition by the respondents, this Court has no hesitation in forming an opinion that the petitioners have not established the ground of jurisdiction and thus, the petitioners are bound to respond to the show cause notices and on receipt of any such objections/explanations, the respondents are bound to continue the proceedings, conclude the same as expeditiously as possible.

18.In fine, all the writ petitions stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-II)

// True Copy//

Sub Assistant Registrar

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To

1. The Central Board of Excise and Customs,
   Government of India,
   North Block, New Delhi.

2. The Commissioner of Customs, Port Import,
   No.33, Rajaji Salai,
   Custom House, Chennai.

3. The Commissioner of Customs,
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   Patto Plaza, Panaji, Goa.

4. The Additional Director General,
   Directorate of Revenue Intelligence,
   Mumbai Zonal Unit, UTI House,
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5. The Additional Director General,
   Directorate of Revenue Intelligence,
   Mumbai Zonal Unit, UTI House,
   No.16, Arthur Bunder Road.,
   Hotal Waldorf Building
   Colaba, Mumbai-5.

+1cc to Mr.V.Sundareswaran, Advocate, S.R.No.32736
+6ccs to M/s. R.Hemalatha, Advocate, S.R.No.32425
+1cc to Mr.K.Jayachandran, Advocate, S.R.No.32839

W.P.Nos.10276 to 10281 of 2011

PMK(CO)
SU(17/08/2021)