IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21-04-2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP Nos.633 and 634 of 2018
And
WMP Nos.790 and 791 of 2018

Palani Andavar Cotton and Synthetic Spinners Ltd.,
236/1, Dhalli Road,
Udumalpet-642 126,
Represented by its Director. .. Petitioner in both WPs

vs.

1.The Director Collector,
District Collectorate,
Tirupur.
.. R-1 in WP 633/2018

2.Tahsildar,
Taluk Office,
Udumalpet.
.. R-2 in WP 633/2018

3.Deputy Director General of Foreign Trade,
O/o. The Joint Director General of Foreign Trade,
1544, India Life Building, (Annex 1st Floor),
Trichy Road,
Coimbatore-641 018. .. R-3 in WP 633/2018 and R-1 in WP 634/2018

4.Assistant Director General of Foreign Trade,
O/o. The Joint Director General of Foreign Trade,
1544, India Life Building, (Annex 1st Floor),
Trichy Road,
Coimbatore-641 018. .. R-4 in WP 633/2018 and R-2 in WP 634/2018

(R-3 and R-4 suo motu impleaded vide order of Court dated 21.01.2021 made in WP 633/2018)

WP 633 of 2018 is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari. Calling for the records of the respondent relating to Demand Notice issued under Section 25 of the Revenue Recovery Act dated 22.11.2017 by the third respondent, quash the same as illegal, arbitrary and devoid of merits.

WP 634 of 2018 is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the respondent relating to the impugned order dated calling for the records of the respondent relating to second respondent's order vide F.No.32/95/181/00001/AM08 dated 01.02.2017, quash the same as illegal, arbitrary and devoid of merits and consequentially direct the respondent herein to give effect to the Settlement Commission order dated 25.11.2008.

For Petitioner in both WPs : Mr.S.Sathiyanarayanan

For R-1 and R-2 in WP 633/18 : No Appearance

For R-3 and R-4 in WP 633/18 : Mr.V.Ashok Kumar, Central Government Standing Counsel.

For R-1 and R-2 in WP 634/18 : Mr.G.Karthikeyan, Assistant Solicitor General of India.

COMMON ORDER

The grievance of the writ petitioner is that in respect of penalty, the Customs Act Central Excise Settlement Commission adjudicated the issues and granted full immunity from payment of fine and penalty and prosecution under the Customs Act.

2. The learned counsel for the petitioner reiterated that the Settlement Commission granted full immunity from payment of fine and penalty and thereafter, the respondents initiated action under the Revenue Recovery Act to recover the interest amount of Rs.1,46,40,000/-

3. The learned counsel for the petitioner made a submission that the issues were settled and the copy of the order passed by the Settlement Commission was also communicated to the respondents. In spite of the fact that the applicant is granted full immunity from payment of fine and penalty, they have mistakenly instituted proceedings under the Revenue Recovery Act and therefore, the proceedings are to be quashed.

4. The learned Assistant Solicitor General of India and the learned Central Government Standing Counsel appearing on behalf of the respondents state that certain facts regarding payments made by the petitioner were brought to the notice of the respondents. However, initiation of revenue recovery proceedings are made by following the procedures contemplated.

5. Perusal of the order impugned dated 22.11.2017, which is a demand prior to attachment of land and buildings issued under Section 25 by the Tahsildar, Udumalpet, reveals that the demand is made for a sum of Rs.1,46,40,000/- due from the petitioner, being the Central Excise and Customs Duty and interest amount to the Joint Director General of Foreign Trade, Ministry of Commerce.

6. The learned counsel appearing on behalf of the petitioner states that when full immunity from payment of fine and penalty granted by the Settlement Commission, there is no reason whatsoever to proceed with attachment proceedings issued by the Tahsildar, Udumalept, under the Revenue Recovery Act.

7. This Court is of the considered opinion that payment of penalty, adjustment of the amount already paid or full immunity granted by the Settlement Commission, are the disputed facts, which all are to be adjudicated by the Competent Authorities with reference to the documents and the evidences produced by the respective parties.

8. Contrarily, High Court cannot conduct a roving enquiry in order to cull out the truth regarding the transactions done as well as the liability, which is to be ascertained and determined with reference to the documents. Such an exercise cannot be done in writ proceedings under Article 226 of the Constitution of India.

9. The scope of review under Article 226 of the Constitution of India is to scrutinise the process through which a decision is taken by the Competent Authorities with reference to the Statutes and not the decision itself. Thus, the decision taken, which all are disputed with reference to certain documents are to be adjudicated.

10. The learned counsel for the petitioner made a submission that the copy of the Settlement Commission's order was communicated to the respondent/Deputy Director General of Foreign Trade through a representation dated 14.02.2017 and the said representation is yet to be considered.

11. In view of the facts and circumstances, this Court is inclined to pass the following order:-

(a) The respondent-Deputy Director General of Foreign Trade is directed to consider the representation dated 14.02.2017 submitted by the writ petitioner through Registered Post with Acknowledgement Due (RPAD) and dispose of the same on merits and in accordance with law, if necessary by providing personal hearing if any request is made in this regard by the writ petitioner;

(b) The writ petitioner is directed to send the copy of the representation dated 14.02.2017 once again to the respondent-Deputy Director General of Foreign Trade and all other connected documents, which all are relevant, within a period of two weeks from the date of receipt of a copy of this order;

(c) The respondent-Deputy Director General of Foreign Trade is directed to complete the process of hearing of the representation, take decision and pass orders on merits and in accordance with law, within a period of four weeks thereafter;

(d) Till the disposal of the representation, the respondents are directed not to initiate any coercive action against the writ petitioner.

12. With the above directions, both the writ petitions stand disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Svn

To

1.The Director Collector,
District Collectorate,
Tirupur.

2.Tahsildar,
Taluk Office,
Udumalpet.

3.Deputy Director General of Foreign Trade,
O/o. The Joint Director General of Foreign Trade,
1544, India Life Building, (Annex 1st Floor),
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4.Assistant Director General of Foreign Trade,
O/o. The Joint Director General of Foreign Trade,
1544, India Life Building, (Annex 1st Floor),
Trichy Road,
Coimbatore-611 018.

+2cc M/s.G.R.Associates, Advocate SR.24911

WP Nos.633 and 634 of 2018

SR-II(CO)
CB(24/06/2021)