IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.10.2021

Pronounced on : 18.11.2021

THE HONOURABLE TMT. JUSTICE PUSHPA SATHYANARAYANA
and
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.A.No.1126 of 2021
against
W.P.No.19977 of 2020
and
C.M.P.No.7103 of 2021

1. The Commissioner of Customs,
   Chennai-II Commissionerate,
   Customs House, Rajaji Salai,
   Chennai.

2. The Directorate of Revenue Intelligence,
   Chennai Zonal Unit,
   27,G.N.Chetty Road,
   T.Nagar, Chennai-600 017. ...Appellants/ Respondent

Vs.

Mr.Kannan Ramdurai Iyer,
(Husband of IEC.No.AAKPI0345L Holder),
M/s.Kartik Enterprises,
Flat No.2, Snehakar Apartments,
Bhabha Nagar, Mumbai Naka,
NASIK-422011. ... Respondent/ Petitioner

PRAYER: This Writ Appeal is filed under Clause 15 of the Letters Patent praying to allow the above writ appeal by setting aside the impugned order dated 04.03.2021 passed in W.P.No.19977 of 2020.

Prayer in W.P.No.19977 of 2020: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus to call for the records of the impugned order i.e. intimation U/s. 110(2) of the Customs Act 1962 in F. No. CAU/ DRI/ CZU/ 31/ 2020- CAU-II DIN. 20200973MX00009K8F08 dated 30.09.2020 passed by the 1st respondent and to quash the same and consequently to direct the 1st respondent to release the Dry dates covered under SEIZURE MEMORANDUM with ANNEXURE-A in C. NO.DRI/ CZU/ VIII/ 48/ ENQ-01/ INT-05/ 2020 dated 06.03.2020.

For Appellants : Mr.V.Sundareswaran
Standing Counsel

For Respondent : Mr.Navaneetha Krishnan
for Mr.R.Naveen

JUDGMENT

MOHAMMED SHAFFIQ,J.

In this intra Court appeal, the question that arises for consideration is whether the action of the appellant in extending the time limit in exercise of its power under the proviso to Section 110(2) of the Customs Act, 1962 is valid in law.

Brief facts:

i) The respondent carries on the business of export and import and had, in the course of business, imported dry dates from, according to him, Jebel Ali UAE/Dubai, declaring the country of origin as Oman. There was a search on 21.09.2019 by the Customs Officials and several summons issued under Section 108 of the Act. The respondent appeared in response to a few summons but not all. Twenty two (22) containers of dry dates, for which the shelf life is stated to be two years, were seized on the ground that the place of origin was Pakistan and not Oman as contended by the respondent. This is the crux of the dispute between the respondent and the Authorities. The rate of duty for import of dry dates from Pakistan is 200% whereas the rate for import from Oman is only 20%. According to the respondent, there is no mis-declaration or violation of any of the provisions of the Act and no material on the basis of which the imports have been labelled as 'smuggled', as contended by the appellants in their counter filed in W.P.No.19977 of 2020.

ii) The seizure was effected on 06.03.2020, Section 110(1) of the Customs Act, 1962 provide that where any goods are seized under sub-section(1) and no show cause notice in respect thereof is given under clause(a) of Section 124 of the Customs Act, 1962 within six months of the seizure of the goods, such goods shall be returned to the person from whose possession they were seized. The period of six months expired on 05.09.2020, upon expiry of which the respondent is normally entitled to the return of the consignment/seized goods. The proviso to Section 110(2) of the Customs Act, 1962 states that the Principal Commissioner of Customs or Commissioner of Customs may, for reasons to be recorded by him in writing, extend the period of six months to a further period not exceeding six months, and inform the person from whom such goods were seized of such extension, before the expiry of the period so specified. The impugned intimation in this case was issued on 30.09.2020 extending the period for issuance of show cause notice for a further period of six months invoking the proviso to Section 110 (2) of the Customs Act, 1962, and received by the respondent on 07.10.2020.

iii)The seizure was challenged by way of W.P.No.19977 of 2020 inter alia on the premise that the appellant has failed to comply with the timelines prescribed under Section 110(2) of the Customs Act, 1962. Though, the appellants and the respondent have raised certain other grounds, however both have confined their arguments as to whether the intimation of extension dated 30.09.2020 served on the respondent dated 07.11.2020 is within the period prescribed under Section 110(2) of the Customs Act, 1962.

2. It is the case of the respondent that in terms of the proviso to Section 110(2) of the Customs Act,1962 the extension must be intimated within first 90 days i.e., on or before 05.09.2020 and failure to do so would prove fatal to the validity of the order / proceedings extending beyond the first period of 90 days in exercise of the powers under Section 110(2) of the Customs Act,1962. Though, the time limit was extended by a further period of 90 days by the appellants vide its order dated 30.09.2020 thereby extending the time upto 05.03.2021, the said intimation of extension having been served on the respondent only on 07.11.2020 i.e., subsequent to 05.09.2020, the entire proceedings is barred by limitation and a nullity.

3. Due to the outbreak of Covid-19 pandemic in March 2020, Parliament had introduced the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 whereby the time limit specified in / prescribed / notified under various enactments including the Customs Act,1962 which falls during the period from 20.03.2020 to 29.03.2020 stood extended to 30.09.2020. Importantly, the above amendment Act also enabled the Central government to notify such other date for the completion or compliance of any action.

4. The learned Single Judge after extracting the Taxation

and Other Laws (Relaxation of Certain Provisions) Ordinance 2020, concluded as under :-

> "21. Thus, any act that would have had to be carried out between the period 20.03.2020 to 29.09.2020 could now be carried out on or before 30.09.2020. In the present case the impugned intimation is dated 30.09.2020, signed on 29.09.2020 by the officer. The date of seizure is 06.03.2020 and the period of six months (original period of seizure) expires on 05.09.2020. The intimation of extension should have been brought to the knowledge of the petitioner on or before 05.09.2020, accompanied by the reasons recorded for the extension. However, by virtue of the relaxation ordinance, such time stands extended to 30.09.2020. However, and admittedly, the intimation has been received by the petitioner only on 07.10.2020, beyond the date stipulated in the proviso to Section 110(2) and the reasons for extension have also not been supplied. The counter filed by the revenue also refers to subsequent extensions granted in September which are not relevant, as a counter cannot improve an order, that has to either stand or fall on its own merit. I find support in this regard from the case of Mohinder Singh Gill and Another Vs. Chief Election Commissioner, New Delhi and others (1978 AIR 851)."

5. We find that the above Ordinance has culminated into "The Taxation and Other Laws (Relaxation of Certain Provisions) Act, 2020" (No.38 of 2020). Importantly, the Central Government in exercise of its power under Section 6 of the Taxation and Other Laws (Relaxation of Certain Provisions) Act, 2020 (No.38 of 2020), has extended the date for completion or compliance of various actions under clause (a) or (b) of Section 6 of the Taxation and Other Laws (Relaxation of Certain Provisions) Act, 2020 to the 31st day of December 2020 vide notification G.S.R.601 (E) [F.No.450/61/2000-Cus.IV (Part-I)] and the same reads as under:-

> "In exercise of the powers conferred by Section 6 of the Taxation and Other Laws (Relaxation and amendment of Certain Provisions) Act, 2020 (No.38 of 2020), the Central Government hereby specifies that -
>
> (i) the 30th day of December, 2020 shall be the end date of the period during which the time limit specified in, or prescribed or notified under, the Central Excise Act, 1944 (1 of 1944), the Customs Act, 1962 (52 of 1962) (except sections 30, 30A, 41,41A, 46 and 47), the Customs Tariff

Act, 1975 (51 of 1975) or Chapter V of the Finance Act, 1994 (32 of 1994) falls for the completion or compliance of such action as specified under clause (a) or (b) of the said section; and

(ii) the 31st day of December 2020 shall be the end date to which the time limit for completion or compliance of such action shall stand extended."

6. The above notification extending the time limit for completion or compliance of various action such as completion of any proceeding or issuance of any order, notice, intimation, notification or sanction or approval, by whatever name called, by any authority, commission, tribunal, by whatever name called, from 30.09.2020 to 31.12.2020. The above notification extending the time limit from 30.09.2020 to 31.12.2020 for various actions set out thereon has apparently not been brought to the notice of the learned Single Judge. The learned Single Judge has found that in view of the Ordinance 2020, the time limit prescribed under Section 110(2) of the Customs Act, 1962 would stand extended to 30.09.2020. However, as the subsequent notification has not been brought to the notice of the learned Single Judge, the learned Single Judge was prompted to hold that the impugned intimation extending the time limit under the proviso to Section 110(2) of the Customs Act, 1962 dated 30.09.2020 and receipt of the same by the respondent herein on 07.10.2020 was beyond the period stipulated in the proviso to Section 110(2) of the Customs Act,1962 and thus bad in law.

7. As stated above, the Central Government has now extended the date from 30.09.2020 to 31.12.2020 for completion or compliance of action such as completion of any proceeding or issuance of any order, notice, intimation, notification or sanction or approval, by whatever name called, by any authority, commission, tribunal, by whatever name called. In view of the above notification, the proceedings dated 30.09.2020 though served on 07.10.2020 is within the period extended by the Central Government vide notification G.S.R.601(E) [F.No.450/61/2000-Cus.IV (Part-I)] and thus valid.

8. Though the question as to whether the intimation ought to be served within first period of 90 days or may be served within the extended period was raised, in view of the conclusion that we have arrived at, the above question becomes academic and therefore we do not propose to examine the same and the said question is left open.

9. Thus, the writ appeal is allowed. Consequently, the connected Civil Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner of Customs,
   Chennai-II Commissionerate,
   Customs House, Rajaji Salai, Chennai.

2. The Directorate of Revenue Intelligence,
   Chennai Zonal Unit, 27,G.N.Chetty Road,
   T.Nagar, Chennai-600 017.

+1cc to Mr.V.Sundareswaran, Advocate, S.R.No.59295

+1cc to Mr.R.Naveen, Advocate, S.R.No.59905

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GPL(CO)
SU(03/12/2021)