IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

Writ Petition No.9431 of 2021
and WMP Nos.10016, 10017 and 10018 of 2021

M/s.Larsen & Toubro Limited
represented by its Head - Finance, Accounts & Administration
Mr.P.Jayaprakash
Mount Poonamallee Road, Manapakkam,
Chennai - 600 089.

....Petitioner

Vs

1. Senior Intelligence Officer,
Nhava Sheva - I, Mumbai Zonal Unit,
208, 209, 215, 2nd floor, D-Wing,
M/s.Navi Mumbai SEZ Commercial Complex,
Sector 11, Dronagiri, Raigad - 400 702

2. The Commissioner of Customs,
Chennai - II Commisionerate,
Custom House, No.60 Rajaji Salai,
Chennai-600 001

3. The Commissioner of Customs (Zone -1)
Import - I Commissionerate,
New Custom House, Ballard Estate,
Mumbai - 400 001.

....Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Certiorari calling for the records of the first respondent culminating in issue of summons bearing numbers 93 to 101 all dated 01.04.2021 issued by the first respondent from File No.DRI/MZU/NS-I/INT-08/2021 and quash the same.

For Petitioner : Mr.S.Murugappan

For Respondent : Mr.V.Sundareswaran
Senior Panel Counsel- R1

ORDER

Mr.V.Sundareswaran, learned Senior Panel Counsel accepts notice for the first respondent and is armed with instructions to proceed with the matter finally even at the stage of admission. In the light of order that I propose to pass in this matter, no notice to R2 and R3 are necessary at this juncture. Hence, by consent of learned counsel for the petitioner and learned Senior Standing Counsel for R1, this Writ Petition is taken up for final disposal at this stage.

2. This Writ Petition is filed by Larsen & Toubro Limited challenging summons issued to nine officials of the petitioner company in terms of Section 108 of the Customs Act, 1962 (in short 'Act') calling upon the attendance of the addressees therein before the officials on various dates. The summons are challenged on the ground that the merits of the transactions sought to be enquired into, relate to the taxability of Tunnel Boring Machines used for executing infrastructure products and the said issue is pending before the Authority for Advance Ruling (AAR), at the instance of this petitioner. The petitioner would thus state that since the AAR is seized of this very issue, the authorities should await the decision of the AAR before proceeding further, if at all. I am of the view that this request should be made before the authorities for their consideration, in accordance with law.

3. The challenge to the summons itself is pre-mature, insofar as it only calls upon the addressees to appear before the officials for a preliminary hearing. One cannot assume or hypothesize on what the purpose of the summons is and I am thus loathe to interfere, at this juncture.

4. I draw support in this connection from a judgment of the Supreme Court in the case of Commissioner of Customs V. M.M.Exports (Civil Appeal Nos.82-83 of 2002 along with C.A.No.81 of 2002 dated 01.03.2007), wherein the Supreme Court has also cautioned interference with enquiry at preliminary stages, such as issuance of summons.

5. The apprehension expressed by the learned counsel for the petitioner is that it will be called upon to remit the differential duty, seeing as, according to him, 25% of the duty relating to the issue in dispute has already been deposited. However, there is absolutely nothing on record to support such an apprehension or fear.

6. Representation dated 11.03.2021 filed by the petitioner before the authorities, to which my attention is drawn, only requests that the proceedings be deferred till a decision is rendered by AAR and does not make a mention of any threat put forth by the officials in regard to the remittance of the duty, in advance. The petitioner has, in its submission dated 03.04.2021, made an incidental reference to 'pressure' being exerted by the revenue to make payment. However, I reiterate that since the matter is pending at the stage of summons, it is for the parties to take things forward in a proper manner and in accordance with law, bearing in mind that proper procedure and protocol should be followed in matters of conduct of enquiry, investigation and adjudication.

7. Learned counsel for the petitioner, citing the on-going pandemic, requests that the proceedings may be conducted virtually rather than by way of physical hearing. Such request may be made before the authorities for their consideration in accordance with mutual convenience as well as integrity of procedure.

8. With these observations, this Writ Petition is dismissed. No costs. Connected Miscellaneous Petitions are also dismissed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

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To

1. Senior Intelligence Officer,
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+1 Cc to Mr.V.Sundareswaran, Advocate sr 23451.
+1 CC to Mr.S.Murugappan, Advocate sr 23265

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AKI(CO)
SP(23/04/2021)