IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.18326 of 2020
and WMP.No.1651 of 2021

M/s.Mahalakshmi Traders,
Represented by Partner
K.N.Shankar Babu
No.21, III Main Road,
JC Industrial Estate,
Kanakapura Road, Bangalore. ...Petitioner

Vs.

1.Assistant Commissioner of Customs (GR.7B-DEPB)
No.60, Customs House,
Rajaji Salai, Chennai-600 001.

2.Assistant Commissioner of Customs (EDI),
No.60, Customs House,
Rajaji Salai, Chennai-600 001.

3.Assistant Commissioner of Customs (GR.II),
No.60, Customs House,
Rajaji Salai, Chennai-600 001. ...Respondents
(R3 impleaded vide order dated 24.6.2021
made in WMP.1653/2021 in WP.18326/2020
by this Court)

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari to call for the record pertaining to the impugned demand notice bearing ref. No.F.No.TA/109012/14.05.09, issued by the 1st respondent and quash the same.

For Petitioner : Mr.G.Derric Sam

For Respondents : Mr.Pramod Kumar Chopda
Standing Counsel

COMMON ORDER

The petitioner has challenged a show cause notice dated Nil-8-2009 calling upon it to show cause why customs duty not be recovered in respect of Bill of Entry filed by it on 25.08.2009. The specifics of the notice are not adverted to insofar as the factual details of the transactions are irrelevant to the decision of the legal issue that arises.

2. The petitioner responded on 05.09.2009, setting forth an explanation and also referring to a personal hearing held before the Deputy Commissioner of Customs on 13.04.2009, even prior to the impugned show cause notice wherein various documents were submitted that would clarify the issue raised.

3. Thereafter, there was silence till a letter was issued on 18.11.2016 calling upon the petitioner to remit the demand under the show cause notice issued earlier and also affording an opportunity of personal hearing on 28.11.2016. The petitioner appeared and also filed a letter dated 15.12.2016 reiterating the defence putforth earlier.

4. Pending proceedings initiated in 2009, the Customs portal revealed an alert referring to the pending demand notice as against the petitioner. Despite a request for the reversal of the alert as well as for closure of the proceedings initiated in 2009, there was no action by the respondent leading to the filing of the present writ petition along with WP.No.18328 of 2020 praying for the removal of the alert itself.

5. The latter writ petition came to be disposed by my order dated 16.12.2020, recording the submission of the learned Senior Standing Counsel, Mr.Pramod Kumar Chopda to the effect that the alert had been reversed.

6. The show cause notice has been challenged primarily on the ground that the same has been issued on 14.05.2009 and is pending till date with finalization of proceedings as contemplate under Section 28 of the Customs Act, 1962, (Act).

7. It is an admitted position that the show cause notice has been issued in terms of Section 28 of the Act. Section 28(9)(a) calls for a determination of the duty of the interest under the show cause notice within a period of six months from the date of notice. This date has long passed.

8. Section 28(9)(b) imposes a time limit of one year and Mr.Chopda argues that the aforesaid time limit was not operative

at the time when the show cause notice was issued. Section 28(9)(a) however, grants time of only six months for determination of the duty and interest where it is possible for the revenue to do so.

9. The counter filed by the revenue does not reveal any circumstances, which would justify the elapse of time from 2009 till date, of more than twelve years to keep the proceedings pending. The normal defence offered is that the issue has been transferred to the call book. Even this defence has not raised in this case. The explanation offered, to the effect that there was a change in incumbent officer is hardly acceptable.

10. In the light of the discussion as above, the impugned show cause notice is quashed and this writ petition allowed. Connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

vs
To

1.The Assistant Commissioner of Customs (GR.7B-DEPB)
No.60, Customs House,
Rajaji Salai, Chennai-600 001.

2.The Assistant Commissioner of Customs (EDI),
No.60, Customs House,
Rajaji Salai, Chennai-600 001.

3.The Assistant Commissioner of Customs (GR.II),
No.60, Customs House,
Rajaji Salai, Chennai-600 001.

+1cc to Mr.T.Pramod Kumar Chopda, Advocate Sr.30328

W.P. No.18326 of 2020
and WMP.No.1651 of 2021

gpl[co]
srg 19/07/2021