BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 19.02.2021
CORAM
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
W.P.(MD)Nos.855, 859, 864 & 865 of 2021
and
WMP(MD)Nos.710, 712, 715 & 717 of 2021

M/s.Sri Balaganesan Spinners
Rep.by its Managing Partner
K.Ravichandran
...Petitioner in WP(MD)No.855 of 2021

S.M.Kamaraj
Chartered Accountant
...Petitioner in WP(MD)No.859 of 2021

K.Ravichandran
Managing Partner,
M/s.Sri Balaganesan Spinners
...Petitioner in WP(MD)No.864 of 2021

K.Seenivasagam, Partner,
M/s.Sri Balaganesan Spinners
...Petitioner in WP(MD)No.865 of 2021

Vs.

1.The Joint Commissioner of Customs,
Custom House, New Harbour Estate,
Tuticorin - 628 004.

2.The Additional Director,
Directorate of Revenue Intelligence,
27, G.N.Chetty Road, T.Nagar,
Chennai - 600 017. ... Respondents in all cases

Common Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records pertaining to the notice issued from Order in Original No.11/2020 issued from F.No.DRI/CZU/TIN/VIII/48/15/INT-1/2016 dated 01.12.2020 by the first respondent confirming duty demand and imposing penalties on the petitioner and quash the same.

in all cases :

For Petitioner : Mr.V.Pramila

For Respondents : Mr.B.Vijay Karthikeyan

COMMON ORDER

The petitioner company had imported certain capital goods under what is known as EPCG Scheme (Export Promotion Capital Goods Scheme). The petitioner was given certain concessional benefits on condition to fulfil certain obligations. The petitioner's stand is that they had discharged all the obligations. The petitioner had also furnished discharge certificates. While so, the second respondent herein issued show cause notice dated 14.11.2017 alleging that the petitioner had obtained discharge certificates by fraudulent misrepresentation. The petitioner submitted their reply in response to the show cause notice. Thereafter, personal hearing was also granted. Rejecting the stand taken by the petitioner, the first respondent passed final orders imposing the differential duty as well as penalty vide order dated 01.12.2020. Challenging the same, these writ petitions have been filed.

2.The respondents oppose the writ prayer. They have also filed a detailed counter affidavit. The learned standing counsel took me through the averments set out in the counter affidavit. His core argument is that the writ petitions are not maintainable. The petitioner has to necessarily avail the alternative remedy of appeal provided under the statute. In this regard, the learned standing counsel placed reliance on the decision of the Hon'ble Supreme Court made in ***Assistant Commissioner (CT)LTU, Kakinada & Ors. vs.M/s. Glaxo Smith Kline Consumer Health Care Limited (CIVIL APPEAL NO. 2413/2020 (Arising out of SLP(C) No. 12892/2019).*** The learned standing counsel also placed reliance on the following decisions, namely, 2020 (373) ELT 649 (Mad)., Jet Unipex vs. Commissioner of Customs, Chennai, 2019 (367) ELT 759 (MP) Kiri Shrimankar vs. Commissioner of CGST & Central Excise, 2018 (2) CWC 588 (Roshan Overseas v. Commissioner of Customs and WA(MD)No.1469 of 2018 (S.Rajendran vs. The Joint Commissioner of Customs (Preventive), Trichy.

3.I carefully considered the rival contentions and went through the materials on record. The objection as regards the maintainability of the writ petitions may not have much of force for two reasons. The learned counsel for the petitioners at the very outset submitted that she is confining her argument to only one issue. She made it clear that she does not propose to delve into the matter on merits. According to her, the petitioners made a request for cross examination of those witnesses whose statements were relied on by the adjudicating authority. The request for cross-examination was rejected. Thus, there has been violation of principles of natural justice. When it can be demonstrated that the principles of natural justice have been infringed, then, certainly, a Writ Court can entertain petition under Article 226 of the Constitution of India and availability of the alternative remedy may not really come in the way. She convincingly overcame the authoritative decision cited by the learned standing counsel in ***Glaxo Smith Kline Consumer Health Care Limited*** by pointing out that the impugned order was passed on 01.12.2020 and the writ petition was filed on 08.01.2021. The Hon'ble Supreme Court in the said decision even while overruling the Full Bench decisions passed by various High Courts specifically observed that if the petition is filed before the expiry of the appeal period, the High Court would be at liberty to entertain the writ petition subject to the usual parameters.

4.The learned standing counsel drew my attention to the order dated 30.01.2019 made in WA(MD)No.1469 of 2018 (S.Rajendran vs. The Joint Commissioner of Customs (Preventive), Trichy. The said decision may not have any application to the case on hand, because, in the said case, the noticee wanted to cross examine the co-noticee. Of course, the said decision may come in the way of granting permission to cause production of co-noticees for cross-examination. Of course, two of the petitioners wanted to cross-examine co-noticees. But their request was not confined to that. The petitioners have named the persons whom they wanted to cross examine. At Page No.68 of the typed set of papers, the following names have been set out :

> *"Shri.R.Ramesh, Finance Manager cum Authorised Signatory, M/s.Avaneetha Textiles, Coimbatore;*
>
> *Smt.Uma Sekar, Managing Director, M/s.Avaneetha Textiles;*
>
> *Shri.S.Govindaraj, Proprietor, M/s.Swamy Enterprises, Coimbatore;*
>
> *Shri.T.Subhash, Managing Partner, M/s.Thirumalaiiyes Traders, Coimbatore;*
>
> *Shri.S.M.Kamaraj, Chartered Accountant, and*
>
> *Shri.Esaki, Proprietor, M/s.Synergy Business Associates, Rajapalayam."*

5.There is no dispute that the adjudicating authority has chosen to rely on the statements of these persons. The Hon'ble Supreme Court in a recent decision reported in ***(2020) 10 SCC 529 (I.C.D.S. Ltd. vs. Commissioner of Income Tax)*** held that if the department wants to rely on the evidence of certain witnesses, it may be necessary to provide opportunity of cross examination of these witnesses to the noticee. This is a self-evident proposition for which no authority is needed. The said decision of the Hon'ble Supreme Court squarely applies to the case on hand.

6.Since this basic right of the petitioners has been denied, the order impugned in these writ petitions will have to be necessarily set aside. It is accordingly set aside. The writ petitions are allowed. The matter is remitted to the file of the first respondent. The first respondent will afford an opportunity to the petitioners to cross examine the witnesses whose statements are relied on by the authority. Of course, the petitioners cannot demand that the respondent should facilitate cross-examination of co-noticees. That would be the look-out of the petitioners themselves.

7.These writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

skm

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

1.The Joint Commissioner of Customs,
Custom House, New Harbour Estate,
Tuticorin – 628 004.

2.The Additional Director,
Directorate of Revenue Intelligence,
27, G.N.Chetty Road, T.Nagar,
Chennai – 600 017.

+1 CC to Mr.B.VIJAY KARTHIKEYAN, Advocate (SR-6337[F] dated 22/02/2021)

W.P.(MD)Nos.855, 859, 864 & 865 of 2021
and
WMP(MD)Nos.710, 712, 715 & 717 of 2021
19.02.2021

KM (09.03.2021) 4P 4C