



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.03.2021

CORAM

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

W.P. (MD) No. 7373 of 2021 and
W.M.P. (MD) Nos. 5581 & 5582 of 2021

WEB COPY

M/s. Newsun Innovaation,
Rep. by its partner,
P. Balasubramaniam,
4/19-5, A & B, Balu Metal Compound,
Pitchampalayam Pudur,
P.N. Road, Tirupur - 641 603.

... Petitioner

Vs.

1. The Assistant Commissioner (BRC),
O/o. The Commissioner of Customs,
Custom House,
Tuticorin - 628 004.

2. The Assistant Commissioner (ARC),
O/o. the Commissioner of Customs,
Custom House,
New Harbour Estate,
Tuticorin - 628 004.

3. The Manager,
The Karur Vysya Bank Ltd.,
Tirupur Overseas Branch,
128, Kumaran Road,
Tirupur - 621 601.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the impugned letter dated 05.03.2021 sent by the second respondent in file C.No.VIII/48/463/2021-ARC and quash the same as illegal and to grant such further order or other reliefs as this Court may deem fit and proper in the circumstances of this case.

For Petitioner	: Mr. N. Mariappan
For R-1 & R-2	: Mr. B. Vijay Karthikeyan
For R-3	: Mr. Pala Ramasamy

* * *



ORDER

Heard the learned counsel appearing for the petitioner and the learned Standing counsel appearing for respondents 1 and 2 and the learned counsel appearing for the third respondent/Karur Vysya Bank Ltd.

2. With the consent of the learned counsel on either side, this writ petition is taken up for final disposal at the admission stage itself.

3. The petitioner had suffered an order of assessment dated 22.09.2020. The petitioner had been called upon to pay a sum of Rs.9,88,569/- towards duty of Drawback amount. Interest and penalty was also imposed. Since the petitioner had not questioned the same in the manner known to law or obtained interim order, the Customs authority proceeded to enforce the same and effected attachment of the petitioner's bank account with the third respondent and issued the impugned communication. The same is challenged in this writ petition.

4. The stand of the petitioner is that the impugned Order-in-Original was never served on the petitioner.

5. The matter was listed for admission in the morning. This Court passed over the matter to enable the learned Standing counsel for the Customs Department to get necessary instructions as to whether the Order-in-Original was actually served on the petitioner. The learned Standing counsel has produced convincing materials to show that the Order-in-Original was despatched to the petitioner on 16.10.2020 and it was returned with the endorsement "No such person". I verified the address written on the cover. The Order-in-Original has been despatched to the correct address only.

6. The petitioner would however state that due to business loss, he had left the said premises and that he is presently residing in "No.7/203-A, Guruvayurappan Nagar, Iyyan Thottam, Periya Bommanaiken Palayam, Pooluvapatty, Tirupur-641 602.

7. He would also claim that the intimation regarding change of address was given to the Postal Department. I am not impressed with the said statement. The petitioner must have written to the second respondent about the change of address and requested the second respondent to send communications in future to the said address. Such an exercise was not undertaken by the petitioner.

8. "Section 153 of the Customs Act reads as follows:-

153. Modes for service of notice order, etc.-(1)

An order, decision, summons, notice or any other communication under this Act or the rules made thereunder may be served in any of the following modes, namely:-



(a) by giving or tendering it directly to the addressee or importer or exporter or his customs broker or his authorised representative including employee, advocate or any other person or to any adult member of his family residing with him;

(b) by a registered post or speed post or courier with acknowledgement due, delivered to the person for whom it is issued or to his authorised representative, if any, at his last known place of business or residence;

(c) by sending it to the e-mail address as provided by the person to whom it is issued, or to the e-mail address available in any official correspondence of such person;

(d) by publishing it in a newspaper widely circulated in the locality in which the person to whom it is issued is last known to have resided or carried on business; or

(e) by affixing it in some conspicuous place at the last known place of business or residence of the person to whom it is issued and if such mode is not practicable for any reason, then, by affixing a copy thereof on the notice board of the office or uploading on the official website, if any.

(2) Every order, decision, summons, notice or any communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed or uploaded in the manner provided in sub-section(1).

(3) When such order, decision, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved."

As rightly pointed out by the learned Standing counsel, the second respondent has scrupulously adhered to the aforesaid statutory mandate.

9. Therefore, I am of the view that the petitioner has to be necessarily put on terms. The petitioner's counsel on instructions states that the petitioner would remit 10% of the amount which comes to Rs.98,857/- (Rupees Ninety Eight Thousand Eight Hundred and Fifty Seven only). The petitioner states that the third respondent can retain Rs.98,857/- lying in his bank account.

10. Taking note of the submission made by the petitioner's counsel, I direct the third respondent to withdraw Rs.98,857/- (Rupees Ninety Eight Thousand Eight Hundred and Fifty Seven only) from the petitioner's bank account and remit the same to the second respondent. This amount will be adjusted towards pre-deposit that



the petitioner has to make for filing the statutory appeal. The petitioner is said to have received on 26.03.2021 the impugned Order-in-Original dated 22.09.2020. The petitioner shall file an appeal within a period of sixty days therefrom. The appellate authority will entertain the appeal without raising the question of limitation. The rights of the parties will abide by the outcome of the appeal.

11. Since the amount of Rs.98,857/- from out of the petitioner's account is going to be retained and paid to the department, the impugned communication attaching the petitioner's bank account with the third respondent is quashed.

12. This writ petition stands allowed on these terms. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(P & A)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

PMU

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 Assistant Commissioner (BRC),
O/o. The Commissioner of Customs,
Custom House, Tuticorin - 628 004.
2. The Assistant Commissioner(ARC),
O/o.the Commissioner of Customs,
Custom House, New Harbour Estate, Tuticorin - 628 004.
3. The Manager,
The Karur Vysya Bank Ltd.,
Tirupur Overseas Branch,128, Kumaran Road, Tirupur - 621 601.

+1 CC to M/s.B.VIJAY KARTHIKEYAN, Advocate (SR-14956[F] dated 31/03/2021)

+1 CC to M/s.N.MARIAPPAN, Advocate (SR-14969[F] dated 31/03/2021)

W.P. (MD)No.7373 of 2021
31.03.2021

VR (CO)

TR(01.04.2021) 4P 6C