



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.02.2021

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THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

W.P. (MD)No.10365 of 2020 and

W.M.P. (MD)Nos.9205 & 13442 of 2020

WEB COPY

Sabeer Ahamed Sayeed

... Petitioner

Vs.

The Commissioner of Customs (Preventive),
O/o. The Commissioner of Customs (Preventive),
No.1, Williams Road, Cantonment,
Tiruchirappalli - 620 001.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records pertaining to the impugned order passed by the respondent bearing No.TCP-CUS-PRV-COM-06-2020, dated 30.06.2020 and quash the same.

For Petitioner	: Mr.S.Parthasarathy
For Respondent	: Mr.B.Vijay Karthikeyan

ORDER

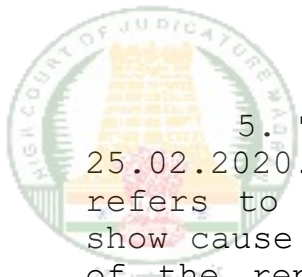
Heard the learned counsel appearing for the writ petitioner and the learned Standing counsel appearing for the respondent.

2. The petitioner challenges the impugned order dated 30.06.2020 whereby the petitioner along with others has been penalised. The petitioner has been imposed with penalty of Rs.3½ Crores under Section 114(iii) and 114AA of the Customs Act, 1962. Questioning the same, this writ petition has been filed.

3. Even at the outset, I made it clear to the petitioner that since the order passed by the respondent is appealable before the Tribunal, the petitioner will have to necessarily fulfill certain threshold requirements, if the issue is to be examined under Article 226 of the Constitution of India. The petitioner's counsel contended that the relied on documents were not furnished to him and since this is a grave violation of the principles of natural justice, he is entitled to maintain this writ petition.

4. Per contra the learned Standing counsel even while taking me through the averments set out in the counter affidavit contended that the relied on documents were very much served on the petitioner along with show cause notice. Therefore, the issue boils down to this:-

Whether the relied on documents were served on the petitioner or not?



5. The petitioner was served with the show cause notice dated 25.02.2020. The said show cause notice contains an annexure which refers to as many as 24 documents. The petitioner after receiving show cause notice sent a reply dated 10.06.2020. The final paragraph of the reply calls upon the respondent to furnish copies of the entire documents relied in the show cause notice. The stand in paragraph No.19 of the counter affidavit is that all the documents that were relied upon while issuing show cause notice were provided. The learned Standing counsel would also take the position that the relied on documents were enclosed along with the show cause notice.

6. I am afraid, I cannot accept this version of the respondent. This is for more than one reason. The petitioner's counsel would draw my attention to the affidavit filed in support of W.P.(MD)No.5975 of 2020 wherein the petitioner had challenged the show cause notice. One of the grounds taken in the said writ petition was that the respondent did not provide copy of the annexure mentioned documents cited in the show cause notice. The show cause notice was questioned as defective on that ground. The writ petition was taken up for final disposal at the stage of admission itself. The petitioner was arrayed as petitioner No.2 in the said writ petition. He was permitted to canvass all the grounds urged by him before the adjudicating authority by way of proper reply. If according to the respondent, such a ground was taken without any basis, nothing stopped the respondent from communicating immediately thereafter that the petitioner was taking a false plea and that he was actually served with all the copies of the documents relied on in the show cause notice.

7. I had already pointed out that in reply to the show cause notice, the specific prayer for supply of the documents was made. In the impugned order, though it is admitted that the reply was received in response to the show cause notice from the petitioner, this contention as regards the non-supply of the relied on documents was not dealt with or controverted. Nothing stopped the adjudicating authority from averring in the impugned order that the contention taken by the noticee/petitioner herein was false. He could have also furnished proof of having served the documents in question on the petitioner. Such an averment or finding is totally absent in the impugned order.

8. The petitioner's counsel also drew my attention to yet another aspect. At page No.85 of the typed set of papers, the Speed Post cover in which the show cause notice was sent has been enclosed. It is seen therefrom that the said show cause notice was despatched on 26.02.2020. It is seen in the postal endorsement that the weight of the contents was 110 gms. and 50 Rupees stamp was affixed on the cover. The show cause notice runs to 36 pages. It is stated by the petitioner's counsel that the weight of the show cause notice alone would come to 110 gms. If all the 24 documents had



been enclosed, the weight would have been much higher and that would have been reflected in the stamp value also. I find this circumstance to be quite interesting and indicative of the truth of the version projected by the petitioner herein.

9. From these foregoing circumstances, I come to the conclusion that the writ petitioner was not served with copies of the documents relied upon by the department both in the show cause notice as well as in the impugned order. On this sole ground, I am constrained to interfere with the impugned order. This order impugned in this writ petition stands quashed in so far as the petitioner is concerned. I make it clear that since it is only the petitioner who has come before this Court to challenge the impugned order, the benefit of this order will enure only in favour of the petitioner and not in favour of others. The respondent is directed to supply all the copies of the documents relied on by the department. The petitioner is directed to submit his reply within a period of two weeks from the date of their receipt. Thereafter, the respondent will pass orders afresh in accordance with law.

10. This writ petition stands allowed on these terms. I make it clear that I have not gone into the merits of the matter. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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:

The Commissioner of Customs(Preventive),
O/o. The Commissioner of Customs(Preventive),
No.1, Williams Road, Cantonment, Tiruchirappalli - 620 001.
+1 CC to M/s.B.VIJAYAKARTHIKEYAN, Advocate (SR-5442[F] dated
16/02/2021)
+1 CC to M/s.S.PARTHA SARATHY, Advocate (SR-5451[F] dated
16/02/2021)

W.P. (MD) No.10365 of 2020
16.02.2021

KB(23.02.2021) 3P 4C