



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.02.2021

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P (MD)No.12635 of 2020

and

W.M.P. (MD)No.10768 of 2020

M/s.Green Port Shipping Agencies,
Represented by its Partner,
S.Avudaiammal

... Petitioner

Vs.

1.The Commissioner of Customs,
Custom House,
New Harbour Estate,
Tuticorin - 628004.

2.The Superintendent of Customs (Adjudication),
Office of the Commissioner of Customs,
Customs House, Tuticorin - 628004.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records of the impugned letter No.C.No VIII/10/175/2012-Adjn dated 08.09.2020 on the file of the first respondent and to quash the same insofar as the petitioner is concerned and consequently direct the first respondent to supply the copies of recovery memo/mahazar as stated at para 2 of SCN and IGM No.2005060 dated 04.01.2011 filed by the petitioner's firm, as stated at para 12(v) of the SCN.

For Petitioner : Mr.R.Vinoth Bharathi

For Respondents : Mr.B.Vijay Karthikeyan.

ORDER

Heard the learned counsel for the writ petitioner and the learned standing counsel for the respondents.

<https://hcservices.ecourts.gov.in/hcservices/>



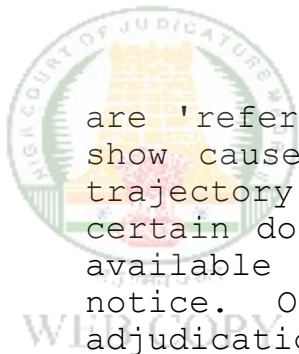
2.The petitioner a steamer agent. The petitioner was served with show cause notice dated 16.01.2013 alleging violation of intellectual property rights of certain third parties and of having indulged in under valuation. The petitioner has given his explanation denying the allegations. The petitioner has now been served with intimation to attend a personal hearing. At this stage, this writ petition has been filed on the ground that some of the documents that find place in the show cause have not been served on the writ petitioner.

3.The learned counsel for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition. His foremost contention is that when he approached this Court by filing W.P.(MD)Nos.11043 and 11063 and 11066 of 2019, they were allowed vide orders dated 30.04.2019. He strongly contended that the case on hand is similarly placed. He drew my attention to the recitals set out in the show cause notice. The show cause notice would state that based on specific intelligence that M/s.Sun International, Delhi, had indulged in the violations mentioned above, there was a raid on the premises of the petitioner on 09.03.2011. Certain documents were also recovered. The petitioner's counsel contests this averment is set out in the show cause notice. According to him, no raid ever took place. That is why, he is insisting on a copy of the seizure mahazar which should have been prepared by the respondents. He would also state that document No.3 namely, IGM No.2005060 dated 04.01.2011 was not filed by him but it is filed by a third party. The petitioner states that if he is going to be penalized on the strength of IGM filed by the third party, the consequences will be severe. It is for this reason, he is insisting on being served with certain documents that find place in the show cause notice.

4.The prayer in the writ petition is opposed by the respondents. The respondents have also filed a counter affidavit. The learned standing counsel for the respondents took me through the averments set out in the counter affidavit and wanted me to dismiss the writ petition, in view of the decision pronounced by the Hon'ble Division Bench reported in **2016 (338) E.L.T. 213 (Mad.) (Sheer Gold Pvt. Ltd., Vs. Commissioner of Customs (AIR), Chennai.**

5.I carefully considered the rival contentions and went through the materials on record. At the very out set, I posed a direct question to the learned standing counsel as to whether, they proposed to rely on the documents other than the ones set out in annexure A of the show cause notice. The learned standing counsel categorically stated that the adjudicating authority proposes rely upon only those documents and not on any other document. This submission made by the learned standing counsel based on instructions is recorded.

<https://hcservices.courts.gov.in/hcservices/> 6. There is a well known distinction between the documents that



are 'referred to' and the documents that are 'relied on'. In the show cause notice, the authority for the purpose of covering the trajectory of events or for the purpose of narration may refer to certain documents but it is not incumbent on the authority to make available every document, which is referred to in the show cause notice. Only those documents on which reliance will be made in the adjudication will have to be supplied to the noticee. That apart, the Hon'ble Division Bench in the aforesaid decision reported in paragraph 6 held as follows:-

"6. At the outset, it should be pointed out that the appellants have approached this court at the stage of show cause notice. The adjudication proceedings are not yet complete. It is true that the show cause notice made a mention about certain documents, but, by the orders impugned in the writ petitions, the Department has taken a stand that those documents are not relied upon. Once the Department takes a stand that they are not relying upon certain documents mentioned in the show cause notice, there is no way the appellants could compel the Department to furnish copies of such documents before adjudication. If at all the Department relies upon any document that they do not furnish to appellant, the appellant can always challenge the order in original passed thereafter, on the ground of violation of principles of natural justice. But, at the stage of adjudication proceedings, the appellant cannot forestall the enquiry. Therefore, we find nothing wrong in the order of the learned Judge. Hence, the writ appeals are dismissed. It is open to the appellant to raise all those points before the adjudicating officer. No costs. The connected miscellaneous petitions are also dismissed."

7.No doubt the orders dated 30.04.2019 of the learned Single Judge in W.P.(MD)Nos.11043, 11063 and 11066 of 2019, appear to be strongly support the contention advanced by the learned counsel for the petitioner but when I am shown a contra decision of the Hon'ble Division Bench, I am bound to follow the order passed by the Hon'ble Division Bench.

8.I need to deal with one other contention of the learned counsel for the petitioner. The petitioner's counsel strongly asserts that the document No.3 in annexure A is not the manifest filed by the petitioner but one filed by a third party. If that be so, it is a point to be canvassed at the time of adjudication. The petitioner in my view has come to the Court prematurely. As of now, I find no violation of principles of natural justice. The petitioner is bound to appear for the personal hearing and advance



all his contentions. All the contentions of the petitioner are left open. The writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

WEB COPY // 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

1.The Commissioner of Customs,
Custom House,
New Harbour Estate,
Tuticorin - 628004.

2.The Superintendent of Customs (Adjudication),
Office of the Commissioner of Customs,
Customs House, Tuticorin - 628004.

+1 CC to Mr.B.VIJAY KARTHIKEYAN, Advocate (SR-4054[F] dated 09/02/2021)

W.P (MD) No.12635 of 2020
09.02.2021

(SE)
KV(25.02.2021) 4P 4C