BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **31.08.2021**

CORAM

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.(MD)No.15477 of 2021
and
W.M.P.(MD)No.12377 of 2021

Sabeer Ahamed Sayeed ... Petitioner

-Vs-

The Commissioner of Customs (Preventive),
Office of The Commissioner of Customs (Preventive),
No.1, Williams Road, Cantonment,
Tiruchirapalli – 620 001. ... Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for records pertaining to the impugned order of the respondent bearing C.No.VIII/10/33/2020-Cus.Adjn DIN: 20210881OI0000414264 dated 16.08.2021 and quash the same and consequently direct the respondent to defer the adjudication proceedings before the respondent in Show Cause notice No.3/2020 (Commr) dated 25.02.2020 till the completion of the Criminal Case in CC No.131 of 2021 pending before learned Judicial Magistrate No.I, Tiruchirappalli.

For Petitioner : Mr.R.S.Sivaraman

ORDER

The prayer sought in this Writ Petition is for a Writ of Certiorarified Mandamus, calling for records pertaining to the impugned order of the respondent bearing C.No.VIII/10/33/2020-Cus.Adjn DIN: 20210881OI0000414264 dated 16.08.2021 and quash the same and consequently direct the respondent to defer the adjudication proceedings before the respondent in Show Cause notice No.3/2020 (Commr) dated 25.02.2020 till the completion of the Criminal Case in CC No.131 of 2021 pending before learned Judicial Magistrate No.I, Tiruchirappalli.

2.The relevant facts which are required to be noticed for the disposal of this Writ Petition are as follows:

as per the affidavit averments of the petitioner, he has claimed that he is working as Branch In-charge of M/s.Cochin Air

Cargo Clearing House at Trichy. It is a Licensed Customs Clearing Agency coming under the purview of the Customs Agent Licensing Regulations bearing Lic No.1/2012, having principal place of business at International Airport, Trivandrum, Kerala and also having branches at Cochin, Trichy, Madurai, Coimbatore, Chennai, Mumbai, Bangalore and other important Airports.

3.In this context, it seems that in respect of some goods received as against the shipment bills bearing Nos.4755077, 4755125, 4755148, 4755121 and 4755102 dated 09.06.2019, there has been a show cause notice issued by the respondent Customs on 25.02.2020. The said show cause notice in fact was challenged by the petitioner in WP(MD) No.5875 of 2020, wherein this Court, by order dated 24.03.2020, while dismissing the Writ Petition, has observed that the petitioner can adjudicate the issue before the respondent and further directed the petitioner to give reply to the show cause notice.

4.Pursuant to which, the petitioner had given a reply to the show cause notice on 10.06.2020 and also he had sought for copies of certain documents for his perusal. Then the respondent had conducted personal hearing and ultimately passed final order on the adjudication on 30.06.2020.

5.However, the said final order dated 30.06.2020 was challenged by the petitioner before this court in WP(MD)No.10365 of 2020, wherein, this Court, by order dated 16.02.2021 having quashed the said final order dated 30.06.2020, directed the respondent to furnish the documents which the petitioner sought for and to proceed with adjudication and pass final order. The relevant portion of the order of the learned Judge reads as follows:

> "*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 stand quashed insofar 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 ensure 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."*

6.Pursuant to the said order passed by this Court, the petitioner had given additional reply to the show cause notice on 07.04.2021. In that reply, the petitioner had also sought for documents in S.No.13, 20 and legible document No.24 and also sought for an opportunity to cross examine the Assistant Commissioner and other officials concerned with the case. In response to the said request made by the petitioner, the respondent Customs Department, by communication dated 02.08.2021 had permitted the petitioner to cross examine the witnesses/officials concerned and accordingly, the petitioner had been permitted to cross examine the officials and the documents sought for by the petitioner had also been furnished.

7.However, simultaneously the petitioner has received the copy of the charge, i.e., the complaint filed by the Customs Department under Sections 135[1](C), 135[1](D) and 135[1](i)(A) of the Customs Act, 1962, whereby the complaint given by the Customs Department against the petitioner to initiate criminal proceedings for the alleged punishable offences had been taken on file by the concerned Criminal Court ie., learned Judicial Magistrate No.I, Tiruchirappalli, in C.C.No.131 of 2021, where the copy of the complaint, by way of summons dated 06.08.2021 had been issued to the petitioner.

8.In this context, it is a further case of the petitioner that, after going through the copy of complaint in C.C.No.131 of 2021, the petitioner has come to understand that majority of the witnesses, which are going to be cross-examined by the petitioner in the adjudication process will be the witnesses in the criminal case also. Therefore, if simultaneously both adjudication process as well as criminal case are permitted to go on, that will prejudice the interest of the petitioner. Therefore, on that ground, the petitioner challenging the summon now issued by the respondent dated 19.08.2021, requiring the petitioner to appear for the hearing on 27.08.2021 has filed the Writ Petition with the aforesaid prayer.

9.Heard Mr.R.S.Sivaram, learned counsel appearing for the petitioner, who has submitted that, the petitioner is not at all a clearing agent, nor an importer and he was only the Branch In-Charge of the Clearing Agency. Therefore, if at all anything to be proceeded against the importer as well as the clearing agent for any alleged reason under the provisions of the Customs Act, that can be proceeded only against importer as well as the clearing agent and not against the Branch In-Charge of the clearing agency. Therefore, singling out the petitioner shows the malafide intention on the part of the respondent and the reason for such malafide intention is that the petitioner in the year 2018 has filed a contempt petition in respect of WP(MD)No.6403 of 2017 against the then Commissioner of Customs and Central Excise, Trichy and therefore that could be one of the reasons, which might have triggered the respondent to take revenge against the petitioner. That is the reason why, in order to single out the petitioner to be brought under these adjudication process as well as criminal proceedings, these kind of proceedings one after another has been issued against the petitioner and now, simultaneously criminal proceedings has also been launched against the petitioner, while adjudication process is pending, where there are common witnesses in both proceedings. Therefore, that will certainly prejudice the interest of the petitioner in the criminal case, if the adjudication process is permitted to go on now, as proposed by the respondent through the impugned summon dated 19.08.2021. Therefore, the learned counsel for the petitioner seeks indulgence of this Court to quash the said impugned summon by quashing the adjudication proceedings as of now by way of deference, till the decision is taken in criminal proceedings.

10.I have considered the said submissions made by the learned counsel appearing for the petitioner and also have perused the materials placed before this Court.

11. If we peruse the relevant provisions of the Customs Act, ie., Section 135 under the heading 'evasion of duty or prohibition', it has been provided that, whoever commits any of the action that has been mentioned in Section 135(1)(a) to (e) shall be punishable with the imprisonment which may extend to seven years and with minimum punishment of not less than one year.

12. This is the separate proceedings, which can be initiated by the Customs Department as it is a punitive action on the part of the Customs Department as has been provided under Section 135 of the Customs Act, whereas the adjudication proceedings is altogether a different issue, where ultimately penalty could be imposed against the erring person under Sections 114A and 114AA of the Customs Act.

13. In the case on hand, in fact on 30.06.2020, final order has been passed after adjudication. However, the same had been challenged before this Court as referred to above, where the learned Judge has quashed the said order on the ground that certain documents sought for by the petitioner had not been furnished to him and the learned Judge had permitted the respondent to proceed further by giving the documents sought for by the petitioner and also giving an opportunity to the petitioner and in this regard, in the reply to the show cause notice given to the petitioner, since the petitioner has sought for cross examination of some of the witnesses, that has also been permitted by the respondent Department vide proceedings dated 02.08.2021.

14. Insofar as the criminal complaint is concerned, though it had been initiated in the year 2020, the same has been numbered as CC No.131 of 2021 and now the summons have been issued, where the copy of the charge ie., complaint given by the customs Department had also been annexed. Insofar as CC No.131 of 2021 is concerned, it is a separate proceedings, of course under Section 135 of the Customs Act as referred to above, where as per procedure contemplated, the concerned criminal Court will conduct the trial and ultimately come to a conclusion that whether any punishable offence has been committed by the petitioner and if the same is proved beyond reasonable doubt or otherwise then only, ultimate verdict in the acquittal or conviction would be decided and delivered by the concerned criminal Court.

15. However, insofar as the present adjudication process is concerned, it may ultimately end in imposing of penalty under Sections 114A and 114AA of the Customs Act and this proceedings had already been concluded on 30.06.2020 itself. However, for want of furnishing of certain documents, that has been quashed by this Court and accordingly, the respondent was directed to proceed further for furnishing the document.

16. Only in pursuance of the said direction issued by this Court permitting the documents sought for by the petitioner and also permitting the petitioner to cross examine the witnesses as he sought for, now the respondent has fixed the hearing and by thus, the present summon dated 19.08.2021 has been issued.

17. Nowhere in the Customs Act, there is any prohibition to defer the adjudication process, while the criminal proceedings is underway under Section 135 of the Customs Act. Moreover, in the adjudication process to be undertaken by the respondent being quasi judicial proceedings, the ultimate decision to be taken is as to whether penalty under the provisions of the Customs Act has to be imposed against the petitioner or not.

18. Whereas, in the Criminal proceedings, which has already been launched against the petitioner, after full-fledged trial, the Criminal Court will decide as to the guilt of the petitioner whether he has to be punished or not. Therefore, at no stretch of imagination, it can be stated that merely because of adjudication process is being conducted, that will have a prejudice against the petitioner in the criminal proceedings launched against him.

19. In this context, only in service jurisprudence, these kind of interferences would be possible by law Courts by various pronouncements of the Hon'ble Apex Court as well as the High Courts.

Also in view of the peculiar circumstances, where, the service law governing the personnel of the State and Central Authorities concerned, which are in different perspective, where mere preponderance of probability is enough to take a conclusion that whether code of conduct prescribed against service personnel has been violated or not and only in that context, the departmental proceedings would be concluded and the penalties would be imposed against such person.

20. Therefore, the same principle cannot be expected to be adopted here as the proceedings for adjudication as well as the criminal proceedings both are contemplated under the same Act and both are in different perspective for different purpose and ultimate conclusion is also different one. Therefore, it cannot be accepted that in the adjudication proceedings, some of the witnesses are going to be utilized by the Department, who are going to be cross examined by the petitioner, would be the same in the criminal Court and that will prejudice the interest of the petitioner in the criminal case. Therefore, that kind of logic which the petitioner wants to employ may not be available to press into service.

21. Hence, in the considered opinion of this Court, the ground raised by the petitioner cannot be accepted in view of the provisions available in the Customs Act as referred to above. Therefore, this Court feels that the challenge now made by the petitioner against the impugned summons dated 19.08.2021 directing the petitioner to appear for hearing on 27.08.2021 cannot be a successful challenge. In that view of the matter, this Court feels that the Writ Petition fails, hence, it is liable to be dismissed.

22. In the result, this Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

pnm/sm

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),
Office of The Commissioner of Customs (Preventive),
No.1, Williams Road, Cantonment,
Tiruchirapalli - 620 001.

W.P.(MD)No.15477 of 2021
31.08.2021

_RD(29.09.2021) 7P 2C