BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **20.09.2021**
CORAM
THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.(MD)Nos.16643 and 16652 of 2021
and
W.M.P(MD).Nos.13508 of 2021 and 13512 of 2021
(Through Video Conference)

W.P.(MD)No.16643 of 2021:

V.Ayub Khan .. Petitioner

-Vs-

1. The Joint Commissioner of Customs(Preventive),
Government of India,
Ministry of Finance,
Department of Revenue,
No. 1, Williams Road,
Cantonment,
Trichy.

2. The Joint Director,
Directorate of Revenue,
Intelligence Ministry of Finance,
Department of Revenue,
No. 27, Adarsh Towers,
G.N. Chetty Road,
T. Nagar,
Chennai. ..Respondents

Prayer: Writ Petition is filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent in order in Original No. TCP-CUS-PRV-JTC-50/2021 dated 03.08.2021, quash the same as illegal and consequently direct the 1st Respondent to conduct adjudication proceedings afresh after affording the reasonable opportunity to the petitioner within a stipulated time.

W.P.(MD)No.16652 of 2021:

A.Sowkath Ali .. Petitioner

-Vs-

1. The Joint Commissioner of Customs(Preventive),
Government of India, Ministry of Finance,
Department of Revenue, No. 1, Williams Road,
Cantonment, Trichy.

2. The Joint Director,
Directorate of Revenue,
Intelligence Ministry of Finance,
Department of Revenue,
No. 27, Adarsh Towers,
G.N. Chetty Road,
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In both cases:

For Petitioner : Mr.S.Kameshwaran

For Respondents : Mr.B.Vijay Karthikeyan
Standing Counsel

COMMON ORDER

Since the issue raised in these two Writ Petitions arising out of the common happening and the facts are similar, therefore, with the consent of the learned Counsel appearing for both side, these writ petitions are heard together and disposed of by this common order.

2.Based on specific intelligence, the customs authorities had intercepted the Tamil Nadu State Transport Corporation bus bearing Registration No.TN55N0956 on 27.02.2020, proceeded to Karaikudi near Thiruvadanai, in which, the petitioner, that is, V.Ayubkhan, the petitioner in W.P(MD)No.16643 of 2021 was travelling and on identified him in the bus, he admitted that, he was carrying smuggled gold in his trouser pocket. The interception was conducted by the customs, based on the specific intelligence that one A.Sowkath Ali, that is, the petitioner in WP(MD)No.16652 of 2021 was smuggling of gold bars of foreign origin from Srilanka into India and two persons in his gang, namely, one P.Subramaniam and the V.Ayupkhan, the petitioner in this Writ Petition were carrying the smuggling gold, therefore, the officers attached to various regional units of DRI, Chennai Zonal Unit, mounted surveillance on 27.02.2020 and during the surveillance, the said P.Subramaniam and V.Ayupkhan boarded the bus at Ramanathaputan proceeded towards Madurai and Karaikudi, respectively.

3.Pursuant to the said interceptions, where the Ayupkhan was caught, as stated above and based on the statement, he has given, the respondent customs has also proceeded against the said Ayupkhan and one Subramaniam as well as the Sowkath Ali. In this regard a show cause notice was issued under Section 124 of the Customs Act, 1962, (in short 'the Act') on 25.03.2021. Pursuant to the said show cause notice, a personal hearing notice was given on 30.04.2021 to both the petitioners herein, along with the other three persons, whereby, they were directed to appear through video conference on 10.05.2021 at 10.00 a.m.

4.On 10.05.2021, on behalf of these petitioners, advocate entered appearance through video conference, and he had made a request to the adjudicating authorities that, the advocate shall be permitted to file reply to the show cause notice, on or before 31.05.2021.

5.The said time sought for by, on behalf of the petitioners upto 31.05.2021, has been granted by the record of personal hearing, dated 10.05.2021 issued by the respondents, and this has also been received in person by the Counsel appearing for the petitioners on 11.05.2021.

6.When that being so, the lock down period, which was already imposed in the State of Tamil Nadu by the State Government, has been extended from 24.05.2021 upto 6.00 a.m on 31.05.2021, through a Government Order in G.O.Ms.No.387, Revenue and Disaster Management (DM-IV) Department, dated 24.05.2021.

7.With the result, since there has been a complete lock down, the petitioners could not contact either their Counsel or their auditor or any other assistance, and therefore, on or before 31.05.2021, ie., the date or time, which was given by the respondents to the petitioners to respond to the show cause notice, it could not be complied with.

8.Therefore, the petitioners had been in the bonafide impression that, some further extension of time or date would be given by the respondents to the petitioners to respond to the show cause notice, however, straight away, the impugned order of confiscation as well as imposition of penalty, was issued on 03.08.2021.

9.Therefore, on the ground of not giving proper opportunity to respond to the show cause notice in view of the extended lock down period up to 31.05.2021, the petitioners have challenged the impugned order of confiscation and penalty imposed against them.

10. Reiterating the aforesaid facts, the learned Counsel for the petitioners, would submit that on 10.05.2021, no doubt, the learned

Counsel for the petitioners appeared through video conference and sought time to respond to the show cause notice, which was accepted and given time upto 31.05.2021, however, on 24.05.2021, the complete lock down has been extended up to 31.05.2021, infact, that has been further extended, therefore, during the complete lock down period, the petitioners could not contact either the Counsel or the Auditor or any other person for their assistance to prepare the reply to the show cause notice and file the same before the respondents, and in view of this unforeseen reason, due to COVID-19 pandemic, since the petitioners were expecting that a further time limit would be given and intimated to the petitioners by the respondents, all of a sudden, the impugned confiscation order dated 03.08.2021 was issued, therefore, the said order is vitiated, because of violation of principles of natural justice, as the proper opportunity of responding to the show cause notice itself, since has not been given to the petitioners, therefore, the petitioners seek indulgence of this Court against the impugned orders.

11.Per contra Mr.B.Vijay Karthikeyan, learned Standing Counsel appearing for the respondents, on instructions, would submit that, a detailed show cause notice was given on 25.03.2021, therefore, there had been enough time for the petitioners to respond, but they have not chosen to respond, however, at one point of time, when on 30.04.2021, personal hearing notice was given, fixing a personal hearing date on 10.05.2021, that too, through video conference, on the said date, that is on 10.05.2021, the petitioners' Counsel did appear through video conference and he sought for time upto 31.05.2021, that was also considered and granted, therefore, any date between 10.05.2021 and 31.05.2021, the petitioners could have responded to the show cause notice, that too, by video conference as the petitioners were not expected to come in person to offer their reply to the show cause notice, and they could have very well appeared through the video conference, that choice, though was given had not been utilised and they have not responded, therefore, they cannot now seek that they have not been given proper opportunities by the respondents to respond the show cause notice.

12.Therefore, the learned Standing Counsel would contend that, enough opportunities since had already been given to the petitioners and this has been admitted through their Counsel on 11.05.2021, who signed the record of personal hearing, dated 10.05.2021, whereby, he has noted the date, that, on or before 31.05.2021, the petitioners should respond to the show cause notice, they purposely have not come forward to respond to the show cause notice, on or before 31.05.2021, therefore, absolutely, there is no ground, for the petitioners available, to assail the impugned order, which has been passed by following the procedure including the principles of natural justice, therefore, the impugned order is to be sustained, he contended.

13.I have considered the said rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

14. In this case, on 30.04.2021, personal hearing notice was given, whereby, a date was fixed as 10.05.2021 at 10.00 a.m. to 5.00 p.m. for personal hearing. It is also to be noted that, the said personal hearing was through video conference. In response to the same, the learned counsel appearing for the petitioners did appear through video conference on 10.05.2021 and, it seems that he had sought further time up to 31.05.2021 to respond to the show cause.

15. Though time was given upto 31.05.2021, that was also accepted on behalf of the petitioners to respond to the show cause notice, they could not make it. The reason for not responding to the show cause notice, on or before 31.05.2021, is obvious that, during the said period, there has been a complete lock down throughout the State, and in this regard, the lock down already imposed had been extended from 24.05.2021 to 31.05.2021. During the complete lock down period, it cannot be expected that the petitioner can mobilize the documents and evidences in support of them and after contacting the counsel or auditor concerned or any other technical advisors for the petitioners to respond to the show cause, they can make such response, because, that kind of procuring documents and getting legal advice, etc., might not have been possible for the petitioner during the complete lock down period.

16. In this context, it is to be noted that, throughout the nation, for the past, nearly about more than a year during the COVID-19, first wave as well as the second wave, there has been lock down at various parts of the country including this State and in this regard, eventhough, several proceedings had been taken place through video conference insofar as the limitations are concerned, even courts have taken the view that those limitations have to be extended for a further period excluding the COVID-19 lock down period, etc.

17. When that being so, since time was given only upto 31.05.2021, and upto 31.05.2021, even beyond which, there has been a complete lock down in the State, normally it cannot be expected that the petitioner to respond to the show cause notice, therefore, in the considered opinion of this Court, the respondents could have waited or extended the time for the further period after having evaluated the lock down, which was imposed in the State and such an extension should have been given by the respondents to the petitioner to properly respond to the show cause notice.

18. However, in this case, after the 10.05.2021 notice, that is, record of personal hearing, whereby, the time was given up to 31.05.2021, no further time was given or no extension of time was given to the petitioners to respond and thereafter, the impugned order of confiscation of goods had been passed on 03.08.2021. Therefore, this Court feel that such order can be said to be vitiated, in view of the lock down period, where, the expected time since was not given by the respondents, beyond 31.05.2021. Therefore, this Court feel that the impugned order can be interfered with only for the limited purpose of remitting the matter to the respondents to give one more chance to the petitioners to respond to the show cause notice and for personal hearing and thereafter, they can proceed to pass final orders.

19. Accordingly, this writ petition is disposed of with the following order:

> “that the impugned orders are set aside insofar as the petitioners are concerned, and the same is hereby remitted back to the respondents for reconsideration, while reconsidering the same, the respondents shall give an opportunity of being heard by way of personal hearing and to respond to the show cause notice by way of reply, to the petitioners within a period of two weeks from the date of receipt of a copy of this order, and on the date so mentioned, for which a specific notice to be served on the petitioners, the petitioners, in person or through their pleader shall appear and file whatever the reply with documents, if any, to the show cause notice without fail.”

20. It is made clear that except the one personal hearing date, no further time would be given to the petitioners to respond to the show cause notice, after the said personal hearing, the respondents can proceed to decide the issue on merits. It is further made clear that, if the petitioners do not come forward to make reply during the personal hearing, to be fixed in this regard as indicated above, the respondents can proceed without waiting or giving further chance to the petitioners.

21. With these observations and directions, both the writ petitions are disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(AS)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

PJL

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(Preventive),
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2. The Joint Director,
Directorate of Revenue,
Intelligence Ministry of Finance,
Department of Revenue,
No. 27, Adarsh Towers,
G.N. Chetty Road,T. Nagar, Chennai.

+1 CC to M/s.B.VIJAY KARTHIKEYAN, Advocate (SR-29614[F] dated 20/09/2021)

W.P.(MD)No.16643 and 16652 of 2021
20.09.2021

PS(CO)
TR/SKN(24.09.2021) 7P 4C