IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2022

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THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.NOS.7069 & 7075 OF 2021
AND
W.M.P.NOS.7582 TO 7584, 7589 & 7590 OF 2021

(Through Video Conferencing)

1. Vikram Jain,
   Proprietor,
   M/s.Balaji Jewel Paradise,
   Shop No.14, 4^{th} Floor,
   Adinath Complex,
   124, N.S.C.Bose Road,
   Sowcarpet, Chennai - 600 079. ... Petitioner in W.P.No.7069 of 2021
2. Dr.Y.Siva Arul Durai,
   Managing Partner,
   M/s.Saravana Stores Thanga Nagai Maaligai,
   No.115, Usman Road,
   T.Nagar, Chennai - 600 017. ... Petitioner in W.P.No.7075 of 2021

.Vs.

1. The Chief Commissioner of Customs,
   Order of the Chief Commissioner of Customs,
   No.60, Rajaji Salai, Custom House,
   Chennai - 600 001.

2. The Commissioner of Customs (Chennai-IV),
   Order of the Commissioner of Customs,
   Chennai-IV, Customs House,
   No.60, Rajaji Salai,
   Chennai - 600 001. ... Respondents in both W.P's

PRAYER IN W.P.NO.7069 OF 2021:-

Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorari, calling for the entire records relating to the impugned record of personal hearing dated 01.03.2021 in No.CUA/DRI/CHE/10/16/Pt-I CH-IV of the second respondent and quash the same and consequently direct the second respondent to reopen the adjudication in the Show Cause Notice dated 16.09.2013 in F.No.VIII/48/06/2013-DRI, in so far as the petitioner is concern and adjudicate the same afresh by affording an opportunity of cross-examination of witnesses to the petitioner.

PRAYER IN W.P.NO.7075 OF 2021:-

Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Mandamus, directing the second respondent to pass appropriate orders in the communication dated 12.03.2021 of the petitioner, before proceeding further with the adjudication in the Show Cause Notice dated 16.09.2013.

For Petitioners : No appearance
(In both W.P's)

For Respondents : Mrs.M.Sheela
(In both W.P's) Senior Standing Counsel

COMMON ORDER

Mrs.M.Sheela, learned Senior Standing Counsel takes notice on behalf of the respondents.

2. There is no representation on behalf of the petitioners. However, the learned Senior Standing Counsel for the respondents assisted the Court. In W.P.No.7069 of 2021, the petitioner has challenged the impugned record of physical hearing dated 01.03.2021 of the second respondent and to quash the same. In W.P.No.7075 of 2021, the petitioner has prayed for a direction to the second respondent to pass appropriate orders on the communication dated 12.03.2021.

3. Both these proceedings emanates from the Show Cause Notices issued by the Directorate of Revenue Intelligence. The petitioners have earlier filed W.P.Nos.28574 & 28575 of 2013. These writ petitions were disposed by a common order along with a batch of few other writ petitions on 09.10.2020. After the orders came to be passed by this Court in the writ petitions mentioned above, the petitioners also appeared to have participated in the proceedings before the respondents.

4. During the interregnum, the Hon'ble Supreme Court has clarified the position of law in Canon India Private Limited Vs Commissioner of Customs, 2021 (376) ELT 3(S.C), 2021 (3) TMI 384, as to who is proper officer for the purpose of notices

under Section 28 of the Customs Act, 1962. Under these proceedings, the petitioners who were issued with the Show Cause Notices, to show cause as to why penalty should not be imposed on them under Section 112 of the Customs Act, 1962 have filed these writ petitions.

5. Though the learned counsel for the petitioners are not present, what is evident from a reading of the averments in the affidavit is that as per the decision of the Hon'ble Supreme Court in Canon India Private Limited case (referred to supra), the Officers of the Directorate of Revenue Intelligence are not proper officers for the purpose of notices under Section 112 of the Customs Act, 1962. The definition in Section 2(34) of the Customs Act will applies to all the proceedings under the provisions of the Customs Act. Wherever, there is a reference expression "proper officer", such officer should be the one who assessed the goods. It is therefore submitted that the proceedings initiated by the Directorate of Revenue Intelligence is without jurisdiction.

6. I have considered the arguments advanced by the learned Senior Standing Counsel for the respondents and perused the affidavit filed by the petitioners. I have also considered the arguments advanced by the learned counsel who appeared in the batch and assisted the Court.

7. The Show Cause Notices in these proceedings are dated 16.09.2013. The petitioners had earlier filed W.P.Nos.28574 & 28575 of 2013. These writ petitions were inspired earlier from the decision of the Hon'ble Supreme Court in Commissioner of Customs Vs Sayed Ali, 2011 (265) E.L.T. 17 which view has been now confirmed by the Hon'ble Supreme Court in Canon India Private Limited case.

8. Considering the fact that the law has been answered by the Hon'ble Supreme Court in Canon India Private Limited case, I am disposing these writ petitions without expressing any opinion on merits of the case by directing the petitioners to file appropriate written submission before the respondents.

9. It is open for the petitioners to take advantage of the decision of the Hon'ble Supreme Court in Canon India Private Limited case and convince the respondents to pass appropriate orders to drop the proceedings on merits and in accordance with law and in terms of the decision of the Hon'ble Supreme Court in Canon India Private Limited case.

10. It is noticed that the dispute pertains from the year 2015 and the issue is lingering in this Court and the petitioners have approached again this Court in 2021.

Considering the same, I direct the respondents to pass appropriate orders on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this order.

11. It is needless to state that the petitioners shall be heard as per the protocols in force due to Covid-19 pandemic.

12. These Writ Petitions stand disposed of with the above observations. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

Sd/-
Deputy Registrar(CS)

//True Copy//

Sub Assistant Registrar

arb/rgm

To

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Order of the Chief Commissioner of Customs,
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Chennai - 600 001.

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Order of the Commissioner of Customs,
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W.P.NOS.7069 & 7075 OF 2021 AND
W.M.P.NOS.7582 TO 7584, 7589
& 7590 OF 2021

KSM(CO)
PBS/24/02/2022