IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 01.07.2022

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.No.27973 of 2019
&
W.M.P.No.27576 of 2019

P.Karthikeyan ... Petitioner

Vs

1. The Joint Commissioner of Customs (CCO),
   No.1, Williams Road,
   Cantonment,
   Tiruchirapalli – 620 001.

2. The Additional Commissioner of Customs,
   6/7, A.T.D. Street, Race Course Road,
   Coimbatore – 641 018.

... Respondents

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the impugned Order-in-Original No.TCP-CUS-PRV-JTC-014-19 dated 28.06.2019 passed by the 1st respondent in C.No.VIII/10/47/2018-Cus Adj. and quash the same.

For Petitioner	:	Mr.Hari Radhakrishnan
For Respondents	:	Mr.A.P.Srinivas Senior Standing Counsel

ORDER

The challenge is to an order in original dated 28.06.2019, where under the respondents have imposed penalty upon the petitioner in terms of Sections 112 & 114AA of the 'Customs Act, 1962' ('Act') (for brevity 'CA Act, 1962').

2. The petitioner had suffered an order-in-original that had come to be challenged by way of writ petitions in W.P.Nos.33741 & 33742 of 2016. Vide order dated 30.09.2016, a learned Single Judge of this Hon'ble Court rejected the writ petitions on the ground that there was an efficacious statutory remedy that was available as against which the petitioner filed writ appeal Nos.130 & 131 of 2017.

3. The short point raised therein was that there had been violation of principles of natural justice insofar as the petitioner alleged that it had not been afforded an opportunity to cross-examine certain witnesses. A Division Bench (of which I was a part) took the view that the petitioner should be granted such opportunity and to that extent modified the order of the Learned Single Judge as well as that of the Adjudicating Authority, rejecting the prayer for cross-examination of the Official Central Revenue Control Laboratory.

4. A time frame of two months were granted for the above purpose, and thereafter orders were directed to be passed, in accordance with law, based on the result of the cross-examination. The impugned order-in-original dated 28.06.2019 was not set aside by the order in writ appeals but had been confirmed, subject to the result of the opportunity to cross-examine granted.

5. The petitioner was thereafter permitted to cross-examine the chemical examiner and the result/effect of the cross-examination taken note of by the original authority in the impugned order dated 28.06.2019. The authority arrives at a conclusion that the cross-examination has not brought out any material that would support the stand of the petitioner and persuade him to take a view differently from that taken by him in the original proceeding. I am of the considered view that the procedure followed by the authority is appropriate and calls for/warrants, no interference.

6. The challenge to the imposition of the penalty is restricted to the penalty under Section 114 AA of the CA Act, 1962. For this purpose, learned Counsel for the petitioner relies upon an extract of the 27th Report of the Standing Committee on Finance(2005-2006) that sets out the reasons for the insertion of Section 114 A of the aforesaid Act as follows:-

> "63. The information furnished by the Ministry states as follows on the proposed provision:
>
> "Section 114 provides for penalty for importer exportation of goods. However, there have been

> instances where export was on paper only and no goods had ever crossed the border. Such serious manipulators could escape penal action even when no goods were actually exported. The lacuana has an added dimension because of various export incentive schemes. To provide for penalty in such cases of false and incorrect declaration of material particulars and for giving false statements, declarations, etc., for the purpose of transaction of business under the Customs Act, it is proposed to provide expressly the power to levy penalty up to 5 times the value of goods. A new Section 114 AA is proposed to be inserted after Section 114A."
>
> ......
>
> "66.The Committee observe that owing to the increased instances of wilful fraudulent usage of export promotion schemes, the provision for levying of penalty upto five times the value of goods has been proposed. The proposal appears to be in the right direction as the offences involve criminal intent which cannot be treated at par with other instances of evasion of duty. The Committee, however, advise the Government to monitor the implementation of the provisions with due diligence and care so as to ensure that it does not result in undue harassment."

7. Thus according to learned Counsel for the Petitioner, Section 114 A should be interpreted, such that it addresses export transactions only, and none other.

8. This submission is only to be stated to be rejected. Section 114 AA, inserted with effect from 13.07.2006, reads as follows:-

> "114AA. Penalty for use of false and incorrect material - if a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods."

9. A plain reading of the provision makes it clear that it addresses offences of use of false and incorrect material in the transaction of business for the purposes of the CA Act, 1962 and

levies penalty therefore. There is no distinction therein between a transaction of import or export as suggested by the petitioner and to read the provisions thus, would be to distort the language as well as the apparent and stated intent thereof. It is a settled proposition that the interpretation of a statutory provision should be in line with the language and the words/phrases used therein. It is only in the case of ambiguity or where the provision is, in itself unclear, that aids to interpretation, such as the statement of object and reasons, may be pressed into service.

10. In this case, there is no such ambiguity and the language and intent are both clear. There are any number of transactions, both in the course of imports as well as exports, where a person might use/deploy false and incorrect material and it is all such transactions, whether import/export or any other in the course of business, that are sought to be addressed by Section 114 AA. The argument on this score is rejected. As no other point is raised assailing the impugned order, the impugned order is confirmed and this writ petition dismissed. Connected writ miscellaneous petition also dismissed. No costs.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

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To:

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

2. The Additional Commissioner of Customs,
   6/7, A.T.D. Street, Race Course Road,
   Coimbatore - 641 018.

+1cc to M/s.Hari Radhakrishnan, Advocate, S.R.No.42425

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& W.M.P.No.27576 of 2019

SJ(CO)
UMA(27/07/2022)