BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 28.01.2022
CORAM
THE HON'BLE MR. JUSTICE M.SUNDAR
W.P(MD)No.891 of 2022
and W.M.P.(MD)No.729 of 2022

Vinith ... Petitioner

-Vs-

The Assistant Commissioner,
Office of the Assistant Commissioner of Customs,
No.66, Beach Road,
Tuticorin - 628 001. ... Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned in C.No.VIII/10/09/2021-Adjn in O.R.No.09/2021-22-DPU TIN dated 01/12/2021 by the respondent and quash the same as illegal and consequently direct the respondent to release his vehicle namely Bajaj Pulsar bearing its registration No.TN 96 C 4739 to him forthwith.

For Petitioner : Mr.M.Pitchai Muthu
For Respondent : Mr.B.Vijay Karthikeyan,
Senior Standing Counsel for Customs.

O R D E R

In the captioned main writ petition 'a show cause notice (SCN) dated 01.12.2021 bearing reference C.No.VIII/10/09/2021-Adjn in O.R.No.09/2021-22-DPU TIN' {hereinafter 'said impugned SCN' for the sake of convenience and clarity} has been assailed.

2. Mr.M.Pitchai Muthu, learned counsel on record for the writ petitioner and Mr.B.Vijay Karthikeyan, learned Senior Standing Counsel for Customs, who has accepted notice on behalf of the lone respondent are before this Court. Owing to the narrow compass in which captioned matter turns, with the consent of learned counsel on both sides, captioned main writ petition was taken up and heard out.

3. Said impugned SCN has been issued under Section 124 of the 'Customs Act, 1962' ('said Act' for the sake of convenience and clarity). Said impugned SCN has been issued owing to an alleged occurrence on 07.07.2021 in the wee hours (02.30 hours). A perusal of the said impugned SCN brings to light that the allegation against the petitioner, two others and writ petitioner's uncle one Thiru Baskar is that they were carrying about 87 bags of turmeric and the same was intended to be illegally exported to Sri Lanka bypassing

the procedure under said Act. Suffice to say that two two wheelers besides turmeric in 87 bags estimated to weigh qua 2500 kgs approximately were seized. Said impugned SCN has been issued to the writ petitioner and the aforementioned three others. Learned counsel for writ petitioner submits that impugned SCN was served on the writ petitioner on 10.12.2021 and the writ petitioner was called for a personal hearing on 24.01.2021 but instructions are not readily available (for both sides) as to what transpired on 24.01.2021.

4. Learned Revenue Counsel submits that his instructions are that the writ petitioner has not responded to the impugned SCN but he does not have specific instructions about personal hearing scheduled to have been held on 24.01.2021. In any event, there is no disputation or disagreement about the fact that the writ petitioner has not sent a reply or responded to the said impugned SCN.

5. The captioned matter turns on challenge to said impugned SCN. As already alluded to supra said impugned SCN has been issued under Section 124 of said Act calling upon the noticees (four in number including the writ petitioner) to show cause as to why the seized turmeric, two wheelers and packing bags should not be confiscated under various provisions of said Act (sections 113, 115, 119 etc.,). The said impugned SCN also calls upon the noticees to show cause as to why penalty under Section 114(iii) of the said Act should not be imposed. Learned Revenue counsel submitted that this is a challenge to an SCN and in an earlier challenge to an SCN, another Hon'ble Single Judge in Nitin Nayar case ***[Nitin Nayar Vs. The Commissioner of Customs vide order dated 24.06.2014 made in W.P.(MD)No.4174 of 2014*** and reported in ***2014 (310) ELT 294 (Mad)]*** had negatived the prayer. It is not clear if there is any intra Court appeal. Be that as it may, learned counsel for petitioner submits that Nitin Nayar case is clearly distinguishable on facts as that was a case where the noticees had not co-operated with the investigation and it is on that basis that writ petition came to be dismissed. A perusal of Nitin Nayar case does bring to light that it was a case where the writ petitioner was found to be not cooperating with the enquiry but the matter does not end there. Nitin Nayar case cannot be applied to the case on hand for another significant reason. The reason is, the prayer in Nitin Nayar case was for a mandamus to release the lorries which were alleged to have been used regularly for smuggling betel nuts. In the case on hand, the said impugned SCN itself has been assailed and a consequential prayer for release of two wheelers has been made. Therefore, the Court in Nitin Nayar's case did not have an occasion to go into the grounds on which SCN can be assailed.

6. This Court now embarks upon the exercise of considering the grounds on which an SCN can be assailed. The law in this regard is

well settled (in a long line of authorities) and it is only in cases where SCN has been issued without jurisdiction or where there is violation of NJP (Natural Justice Principles) besides some other grounds such as well settled position of law of a higher Court being disregarded, an SCN can be interfered with. Though there is a long line of authorities, this Court deems it appropriate to rely on a recent judgment of Hon'ble Supreme court made in Coastal Container case [order dated 26.02.2019 in Civil Appeal No.2276 of 2019, ***Union of India & Ors. Vs. Coastal Container Transporters Association & Ors***]. The facts are captured in paragraph 4 of Coastal Container case and the same reads as follows:

> *'4. Necessary facts, in brief, are as under :*
>
> *First respondent is an association, whose members are transport operators engaged in the business of transportation of goods entrusted by the customers. By way of impugned show cause notices, the appellants have proposed to demand service tax from the respondents under the category of "cargo handling service", while it is the case of the respondents that the service which is being provided by them, falls under the taxable category of "goods transport agency". The respondents, to bolster their case, have placed reliance upon circulars dated 06.08.2008 and 05.10.2015 issued by the Central Board of Excise and Customs (CBEC).*
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> *Based upon the intelligence gathered by the officers of Rajkot Regional Unit, which revealed that several business entities including respondent nos.2 and 3 who are engaged in doing the business of cargo handling in west coastal region but had got themselves registered under "good transport agency", by taking approval from the competent authorities, searches were conducted in the premises of respondent nos.2 and 3. It is alleged that during such searches several incriminating documents, including the quotations submitted by the respondent-companies to their customers were seized and statements of the Directors were recorded as per the provisions of Central Excise Act, 1944 read with the provisions under Finance Act, 1994. Subsequently, the show cause notices dated 08.10.2015 and 30.09.2015, were issued to respondent nos.2 and 3, which are impugned in the writ petition filed before the High Court.'*

7. The legal position regarding grounds qua challenge to an SCN have been elucidatively set out in paragraph 19 of Coastal Container case and the same reads as follows:

*'19. On the other hand, we find force in the contention of the learned senior counsel, Sri Radhakrishnan, appearing for the appellants that the High Court has committed error in entertaining the writ petition under Article 226 of Constitution of India at the stage of show cause notices. Though there is no bar as such for entertaining the writ petitions at the stage of show cause notice, but it is settled by number of decisions of this Court, where writ petitions can be entertained at the show cause notice stage. Neither it is a case of lack of jurisdiction nor any violation of principles of natural justice is alleged so as to entertain the writ petition at the stage of notice. High Court ought not to have entertained the writ petition, more so, when against the final orders appeal lies to this Court. The judgment of this Court in the case of **Union of India & Anr. V.Guwahati Carbon Ltd.** (supra) relied on by the learned senior counsel for the appellants also supports their case. In the aforesaid judgment, arising out of Central Excise Act, 1944, this Court has held that excise law is a complete code in order to seek redress in excise matters and held that entertaining writ petition is not proper where alternative remedy under statute is available. When there is a serious dispute with regard to classification of service, the respondents ought to have responded to the show cause notices by placing material in support of their stand but at the same time, there is no reason to approach the High Court questioning the very show cause notices. Further, as held by the High Court, it cannot be said that even from the contents of show cause notices there are no factual disputes. Further, the judgment of this Court in the case of **Malladi Drugs & Pharma Ltd. V. Union of India**, relied on by the learned senior counsel for the appellants also supports their case where this Court has upheld the judgment of the High Court which refused to interfere at show cause notice stage.*

8. This Court having set out the excerpted portions of Costal Container case law qua grounds for challenge to SCN examined the grounds raised in the case on hand. A careful perusal of the writ affidavit and the arguments advanced at the bar making it clear that they turn only on facts and there is nothing to demonstrate that there is violation of NJP or that the said impugned SCN has been issued without jurisdiction. There is nothing to demonstrate that

said impugned SCN has been issued in disregard of settled provisions of law; that the respondent has powers to issue SCN under Section 124 of Customs Act calling upon the noticees to show cause as to why there should be no confiscation is beyond any pale of doubt. Absent grounds for challenge to an SCN, the captioned main writ petition cannot but fail.

9. However, it is open to writ petitioner to respond to impugned SCN and it is open to the respondent to proceed with the impugned SCN, the writ petitioner shall co-operate with the proceedings and the same can be carried to its logical end on its own merits and in accordance with law as expeditiously as the business of the respondent would permit.

10. Captioned writ petition fails and the same is dismissed albeit with the aforementioned observations. Consequently captioned WMP is also dismissed. There shall be no order as to costs.

Sd/-

Assistant Registrar(Writs)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

vsm

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 Assistant Commissioner,
Office of the Assistant Commissioner of Customs,
No.66, Beach Road,
Tuticorin – 628 001.

+1 CC to M/s.B.VIJAY KARTHIKEYAN, Advocate (SR-2888[F] dated 28/01/2022)

W.P(MD)No.891 of 2022
and W.M.P.(MD)No.729 of 2022
28.01.2022

SVS(CO)
TR(18.02.2022) 5P 3C