BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On	19.04.2022
Pronounced On	09.06.2022

CORAM

THE HON'BLE **MR.JUSTICE C.SARAVANAN**

W.P.(MD) Nos.7447 to 7450 of 2022
and
W.M.P. (MD) Nos.5652 to 5655 of 2022

M/s.Sri Balaganesan Spinners,
Represented by its Managing Partner,
K.Ravichandran,
S.No.36/1, 34/1, 36/2,
N.Shanmugasundarapuram,
Srivilliputur, Virudhnagar -626125. ... Petitioner in W.P.(MD) No.7447/22

K.Ravichandran ... Petitioner in W.P.(MD) No.7448/22

K.Seenivasagam ... Petitioner in W.P.(MD) No.7449/22

Kamaraj S.M. ... Petitioner in W.P.(MD) No.7450/22

Vs.

1.The Joint Commissioner of Customs,
Custom House, New Harbour Estate,
Tuticorin - 628 004.

2.The Additional Director,
Directorate of Revenue Intelligence,
27, G.N.Chetty Road, T.Nagar,
Chennai - 600 017. ... Respondents in all W.Ps.

Common Prayer:- Writ Petitions filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records and quash the proceedings pertaining to the Order-in-Original No.18/2022 (Denovo) dated 31.03.2022 passed by the first respondent from C.No.VIII/10/38/2017-ADJN and F.No.DRI/ CZU/ TTN/ VIII /48/ 15/ INT-I/ 2016 confirming the duty demand and imposing penalties on the petitioner.

For Petitioner in all W.Ps. : M/s.Pramila V

For Respondents in all W.Ps. : Mr.R.Aravindan
Senior Standing Counsel

COMMON ORDER

This is a third round of litigation before this Court. The petitioner had been issued with a Show Cause Notice, dated 14.11.2017. The petitioner had thereafter suffered an Order-in-Original No.11/2020, dated 01.12.2020. The petitioner had challenged the same before this Court in W.P.(MD)Nos.855, 859, 864 and 865 of 2021. The said Writ Petitions were allowed by this Court, by its common order dated 19.02.2021, with the following observation:-

> *''1.The learned standing counsel drew my attention to the order dated 30.01.2019 made in WA (MD)No.1469 of 2018 (S.Rajendran vs. The Joint Commissioner of Customs (Preventive), Trichy. The said decision may not have any application to the case on hand, because, in the said case, the noticee wanted to cross examine the co-noticee. Of course, the said decision may come in the way of granting permission to cause production of co-noticees for cross-examination. Of course, two of the petitioners wanted to cross-examine co-noticees. But their request was not confined to that. The petitioners have named the persons whom they wanted to cross examine. At Page No.68 of the typed set of papers, the following names have been set out:*
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> > *''Shri.R.Ramesh, Finance Manager cum Authorised Signatory, M/s.Avaneetha Textiles, Coimbatore;*
> > *Smt.Uma Sekar, Managing Director, M/s.Avaneetha Textiles;*
> > *Shri.S.Govindaraj, Proprietor, M/s.Swamy Enterprises, Coimbatore;*
> > *Shri.T.Subhash, Managing Partner, M/s.Thirumalaiiyes Traders, Coimbatore;*
> > *Shri.S.M.Kamaraj, Chartered Accountant, and*
> > *Shri.Esaki, Proprietor, M/s.Synergy Business Associates, Rajapalayam.''*
>
> *2.There is no dispute that the adjudicating authority has chosen to rely on the statements of these persons. The Hon'ble Supreme Court in a recent decision reported in (2020) 10 SCC 529 (T.C.D.S. Ltd. vs. Commissioner of Income Tax) held*

that if the department wants to rely on the evidence of certain witnesses, it may be necessary to provide opportunity of cross-examination of these witnesses to the noticee. This is a self-evident proposition for which no authority is needed. The said decision of the Hon'ble Supreme Court squarely applies to the case on hand.

3.Since this basic right of the petitioners has been denied, the order impugned in these writ petitions will have to be necessarily set aside. It is accordingly set aside. The writ petitions are allowed. The matter is remitted to the file of the first respondent. The first respondent will afford an opportunity to the petitioners to cross examine the witnesses whose statements are relied on by the authority. Of course, the petitioners cannot demand that the respondent should facilitate cross-examination of co-noticees. That would be the look-out of the petitioners themselves.

4.These writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.''

2. After the above said common order dated 19.02.2021 was passed by this Court, the Hon'ble Supreme Court rendered its decision in **Canon India Private Limited** Vs. **Commissioner of Customs**, 202 (376) E.L.T. 3(S.C.). Under these circumstances, the petitioner filed W.P. (MD) Nos.1644 to 1647 of 2022, wherein the petitioner challenged the Show Cause Notice dated 14.11.2017, issued by the Officers of the Directorate of Revenue Intelligence.

3. The learned counsel for the petitioner submits that the above Writ Petitions were directed to be tagged along with the connected batch of Writ Petitions pending before the Principal Seat at Chennai vide order dated 31.01.2022. However, the above mentioned Writ Petitions were not transferred to the Principal Seat at Chennai for being tagged and being heard with the batch of Writ Petitions reserved on 03.02.2022. Therefore, the petitioner was not heard when the orders were reserved in the connected cases at the Principal Seat at Chennai,

4. It is submitted that meanwhile, the first respondent had passed the impugned Order-in-Original No.18/2022, dated 31.03.2022. The petitioner was given an opportunity to cross-examine the witness in terms of the order of this Court, dated 19.02.2021 in W.P.(MD) Nos.855, 859, 864 and 865 of 2021. However, since the petitioner had challenged the Show Cause Notice in W.P. (MD) Nos.1644 to 1647 of 2022, the petitioner did not participate in the said proceedings and thus, the impugned order came to be passed.

5. The learned Senior Standing Counsel for the respondents submits that the Writ Petitions are devoid of merits and therefore, the petitioner has an alternate remedy. That apart, it is submitted that the Hon'ble Supreme Court in **Canon India Private Limited** cited *supra* has now been overcome by way of amendment to Section 28 of the Customs Act, 1962 and therefore, on this score also, the Writ Petitions are liable to be dismissed.

6. By way of rejoinder, the learned counsel for the petitioner submits that the amendment made to Section 28 Customs Act, 1962 by way of Finance Act, 2022 is now the subject matter of challenge before several Courts and notice has also been ordered by the Delhi High Court.

7. Heard the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents.

8. I have already passed a detailed common order in a batch of Writ Petitions in the case of **M/s.N.C.Alexender** Vs. **The Commissioner of Customs, Customs House, Chennai** in W.P.Nos.33099 of 2015 and etc., on 09.06.2022 (i.e. Today) in the Principal Seat at Chennai after considering the amendment to Section 28 of the Customs Act, 1962 vide Finance Act, 2022 and validations in Section 97 of the Finance Act, 2022. Section 97 of the Finance Act, 2022 reads as under:-

Validation of certain actions taken under Customs Act.

> 97. Notwithstanding anything contained in any judgment, decree or order of any court, tribunal, or other authority, or in the provisions of the Customs Act, 1962 (hereinafter referred to as the Customs Act),--
>
> (i) anything done or any duty performed or any action taken or purported to have been taken or done under Chapters V, VAA, VI, IX, X, XI, XII, XIIA, XIII, XIV, XVI and XVII of the Customs Act, as it stood prior to its amendment by this Act, shall be deemed to have been validly done or performed or taken; Validation of certain actions taken under Customs Act.
>
> (ii) any notification issued under the Customs Act for appointing or assigning functions to any officer shall be deemed to have been validly issued for all purposes, including for the purposes of section 6;
>
> (iii) for the purposes of this section, sections 2,

3 and 5 of the Customs Act, as amended by this Act, shall have and shall always be deemed to have effect for all purposes as if the provisions of the Customs Act, as amended by this Act, had been in force at all material times.

Explanation.-- For the purposes of this section, it is hereby clarified that any proceeding arising out of any action taken under this section and pending on the date of commencement of this Act shall be disposed of in accordance with the provisions of the Customs Act, as amended by the Act".

9. I have also pointed out in the above case that when the order was passed by the Hon'ble Supreme Court in **Canon India Private Limited** cited *supra,* the amendment to Section 17 of the Customs Act, 1962 w.e.f. 08.04.2011 vide Section 38 of the Finance Act, 2011 was not brought to its attention and that the Officers of the Directorate of Revenue Intelligence (DRI), on deputation to Directorate of Revenue Intelligence (DRI) from the Customs and Central Excise Department and other Departments, had already been recognized as "Officers of Customs" under Notification issued under Section 4(1) of the Customs Act, 1962 which fact was also not brought to the attention of the Hon'ble Supreme Court.

10. Therefore, the challenge to the impugned proceedings on the strength of the decision of the Hon'ble Supreme Court in **Canon India Private Limited** cited *supra* cannot be countenanced. Further, considering the fact that the petitioner had already filed Writ Petitions on two other occasion and that in the last occasion, i.e. in W.P. (MD) Nos.855, 859, 864 and 865 of 2021, a common order dated 19.02.2021 came to be passed by this Court allowing these Writ Petitions, there is no merits in these Writ Petitions.

11. However, since the impugned order has been passed during the pendency of the W.P.(MD) Nos.1644 to 1647 of 2022 and that the petitioner could not avail an opportunity of cross examining the witnesses whose statements were relied on, I am inclined to quash the impugned order and remit the case back to the respondents to pass a speaking order preferably within a period of six months from the date of receipt of a copy of this order subject to the petitioner co-operating with the respondents.

12. If the petitioner fails to co-operate with the respondents, the respondents are at liberty to pass a fresh order *denovo* based on the available records, on merits, by reiterating the content of the impugned order which otherwise stands quashed by this order.

13. As far as the connected Writ Petitions in W.P. (MD) Nos.1644 to 1647 of 2022 which were directed to be transferred for

being heard along with the above batch of Writ Petitions in **M/s.N.C.Alexander** Vs. **The Commissioner of Customs, Customs House, Chennai,** in W.P.Nos.33099 of 2015 and etc. is concerned, the said Writ Petitions will have to be dismissed as infructuous. However, since files of the said Writ Petitions are not available before me, I am not passing any separate orders in the said Writ Petitions.

14. These Writ Petitions are disposed with the above observations No cost. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/06/2022

Sub Assistant Registrar(CS)

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To

1.The Joint Commissioner of Customs,
Custom House, New Harbour Estate,
Tuticorin - 628 004.

2.The Additional Director,
Directorate of Revenue Intelligence,
27, G.N.Chetty Road, T.Nagar,
Chennai - 600 017.

Common Order made in
W.P.(MD) Nos.7447 to 7450 of 2022
and
W.M.P. (MD) Nos.5652 to 5655 of 2022
09.06.2022

SS(22/06/2022) 6P 3C