BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 08.02.2022
CORAM

THE HONOURABLE MR. JUSTICE C.SARAVANAN

Writ Petition (MD) No.19238 of 2019
and
W.M.P.(MD) Nos.15628 and 16331 of 2019

M/s.Good Shepherd System Services,
Rep. by its Proprietor,
J.David Rajamani,
S/o.V.F.Joseph Raj,
No.167/A, Mill Road,
Nazareth,
Tuticorin District - 628 617. .. Petitioner

Versus

1. The Additional Commissioner,
Office of the Commissioner of Customs,
Special Intelligence and Investigation Branch,
Customs House, New Harbour Estate,
Tuticorin - 628 004.

2.The Deputy Commissioner,
Office of the Commissioner of Customs,
Special Intelligence and Investigation Branch,
Customs House, New Harbour Estate,
Tuticorin - 628 007.

3.The Superintendent of Customs (ADJN),
Office of the Commissioner of Customs,
Customs House, New Harbour Estate,
Tuticorin - 628 004. .. Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari, to call for the records pertaining to the show cause notice dated 29.03.2019 in C.No.VIII/48/106/2017-SIIB, passed by the first respondent and quash the same.

For Petitioner : Mr.M.Palanivel

For Respondents : Mr.B.Vijay Karthikeyan
Senior Standing Counsel for Customs

ORDER

The petitioner has challenged the impugned show cause notice dated 29.03.2019, bearing C.No.VIII/48/106/2017-SIIB. The petitioner is one of the co-noticees in the impugned notice. The show cause notice called upon the petitioner to show cause as to why penalty should not be imposed on him under Section 114-A of the Customs Act, 1962.

2.The case of the petitioner is that he was providing Electronic Data Interchange [EDI] Services to the Port Trust and that some of the Officers of the Customs colluded with the Exporters and Importers and facilitated to file shipping bills for the purpose of fraudulent availment of duty drawback without the physical availability of the export cargo, in which, the employees of the petitioner were found to be helped the Department, by fabricating the export documents.

3.The learned counsel for the petitioner submits that though the petitioner was arrested and later released on bail, they have filed a complaint on 10.09.2019, pursuant to which, a F.I.R. has been registered against the Customs Officers and therefore, the impugned proceedings in the show cause notice should be quashed.

4.Opposing the relief sought for in the present Writ Petition, the learned Senior Standing Counsel for Customs has drawn the attention of this Court to Paragraph 7.1. of the counter affidavit, wherein it has been stated that the petitioner was a sub-contractor of M/s.Xeam Ventures (P) Limited and was required to comply with the non-disclosure undertaking. It is submitted that by acquiring the Single Sign On ID [SSOID] and passwords of its employees, the petitioner had accessed the confidential information of the Central Board of Indirect Taxes and Customs [C.B.I.C.] and of Trade. It is further submitted that in contravention of the non-disclosure undertaking, the petitioner herein had shared the SSOID and password of the persons engaged by them with one Immanuel Jayaprakash, Vinoth Sugaraj and Senthil Prabhu, employees of St. John I.C.D., Thoothukudi, who was approved as Customs Cargo Service Provider by the Commissioner of Customs, Thoothukudi, for handling export and import cargo, which has resulted in fraudulent availment of duty drawback by the exporters, amounting to Rs.12 Crores and therefore, the show cause notice was issued to all concerned, including the petitioner herein.

5.I have considered the arguments advanced by the learned counsel appearing for the petitioner and the learned Senior Standing Counsel appearing for the Customs.

6.The petitioner cannot challenge the show cause notice and the Writ Petition is premature. It is open to the petitioner to give a suitable reply to the show cause notice and participate in the adjudication mechanism prescribed under the Customs Act, 1962, to distance itself from any liability that may be fastened against the petitioner pursuant to the proposal contained in the impugned show cause notice dated 29.03.2019. Further, there are several disputed facts, which would require a detailed adjudication and cannot be decided in a summary proceedings under Article 226 of the Constitution of India.

7.The present Writ Petition is therefore misconceived and is liable to be dismissed. The petitioner is directed to participate in the adjudication mechanism prescribed under the Customs Act by filing proper return statement.

8.This Writ Petition is accordingly dismissed with the above observation. No costs. Consequently, connected Miscellaneous Petitions are closed. It is made clear that the show cause notice shall not be adjudicated by the Officers against whom, the F.I.R. has been registered to maintain neutrality.

Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

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Tuticorin - 628 004.

2.The Deputy Commissioner,
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Customs House, New Harbour Estate,
Tuticorin - 628 007.

3.The Superintendent of Customs (ADJN),
Office of the Commissioner of Customs,
Customs House, New Harbour Estate,
Tuticorin - 628 004.

+1 CC to M/s.S.RAMASAMY, Advocate (SR-4944[F] dated 09/02/2022)

+1 CC to M/s.B.VIJAY KARTHIKEYAN, Advocate (SR-4872[F] dated 08/02/2022)

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RD(25.02.2022) 4P 6C