IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2023

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.Nos.5296 and 3827 of 2021
and
W.M.P.No.4383 of 2021

Devendra Kumar Yadav ... Petitioner in both petitions

v.

The Joint Commissioner of Customs,
Chennai IV Customs Commissionerate,
No.60, Rajaji Salai, Customs House,
Chennai 600 001. ... Respondent in both petitions

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records connected with common order in Originals bearing nos.78089 and 78090 of 2020 dated 15.12.2020 passed by the respondent herein and to quash the same for having been passed in gross violation to the principles of natural justice, without jurisdiction and contrary to law.

For petitioner in both petitions : Mr.N.Viswanathan

For Respondents in both petitions : Ms.R.Hemalatha
Standing Counsel

COMMON ORDER

The writ petitions have been filed challenging the impugned order dated 15.12.2020 on the limited ground that the petitioner has not been afforded reasonable opportunity of hearing. Originally, a Show Cause Notice dated 23.03.2020 came to be issued wherein, the petitioner was stated to have connived with the following export firms viz., M/s.Adhar Impex and Surabhi Fashions. Investigation was carried out under the GST. During the course of such investigation, it was found that the petitioner had connived with the exporter in clearance by over valuing the goods with a view to claim higher draw back / IGST. The petitioner in response to the above notice, was granted opportunities of hearing on 05.08.2020, 14.08.2020 and 04.09.2020. The petitioner engaged a lawyer on 26.09.2020. Thereafter, the petitioner submitted his reply on 08.10.2020 wherein, a request of personal hearing was sought for. The respondent vide communication dated 20.11.2020 intimated the petitioner that the personal hearing was fixed on 25.11.2020. The petitioner requested for an other opportunity vide email dated 20.11.2020 due to inconvenience of counsel representing the petitioner in attending the personal hearing fixed on 25.11.2020. The respondent proceeded to pass impugned order dated 17.12.2020 wherein it was observed as under:

> *"However, vide e-mail dated 20.11.2020 the advocate appearing on behalf of the noticee requested for adjournment of the hearing. However, the Adjudicating Authority having felt that enough opportunity have been granted for personal hearing (04 PH opportunity granted) to the noticee, another hearing was not scheduled."*

2. The learned counsel for the petitioner would submit that during the above said period there was pandemic and therefore, there was difficulty faced by litigants in participating in the proceeding. Taking into account the adversities faced by the litigants, the Hon'ble Supreme Court has taken *suo motu* cognizance for extension of limitation in M.A.No.21 of 2022 in M.A.No.665 of 2021 in Suo Motu W.P.No.(c).3 of 2020 wherein, it has been held as follows:

> *"1. In March. 2020, this Court took Suo Motu cognizance of the difficulties that might be faced by the litigants in filing petitions/ applications/ suits/ appeals/ all other quast proceedings within the period of limitation prescribed under the general law of limitation or under any special laws (both Central and/or State) due to the outbreak of the COVID-19 pandemic.*
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> *2. On 23.03.2020, this Court directed extension of the period of limitation in all proceedings before Courts/Tribunals including this Court w.e.f. 15.03.2020 till further orders. On 08.03.2021. the order dated 23.03.2020 was brought to an end, permitting the relaxation of period of limitation between 15.03.2020 and 14.03.2021. While doing so, It was made clear that the period of limitation would start from 15.03.2021.*
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> *3.Thereafter, due to a second surge in COVID-19 cases, the Supreme Court Advocates on Record Association (SCAORA) intervened in the Suo Motu proceedings by filing Miscellaneous Application No.*

665 of 2021 seeking restoration of the order dated 23.03.2020 relaxing limitation. The aforesaid Miscellaneous Application No.665 of 2021 was disposed of by this Court vide Order dated 23.09.2021, wherein this Court extended the period of limitation in all proceedings before the Courts/Tribunals including this Court w.e.f 15.03.2020 till 02.10.2021.

4. The present Miscellaneous Application has been filed by the Supreme Court Advocates-on-Record Association in the context of the spread of the new variant of the COVID-19 and the drastic surge in the number of COVID cases across the country.Considering the prevailing conditions, the applicants are seeking the following:

> *"i. allow the present application by restoring the order dated 23.03.2020 passed by this Hon'ble Court in Suo Motu Writ Petition (C) NO. 3 of 2020; and*
> *ii. allow the present application by restoring the order dated 27.04.2021 passed by this Hon'ble Court in M.A. no. 665 of 2021 in Suo Motu Writ Petition (C) NO. 3 of 2020; and*
> *iii. pass such other order or orders as this Hon'ble Court may deem fit and proper."*

5. Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A. No. 21 of 2022 with the following directions:

"I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi- judicial proceedings

II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022

III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022. notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance *period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.*

IV. It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings."

3. It was submitted by the learned counsel for the petitioner that they had difficulties in appearing for the personal hearing fixed on 25.11.2020 in view of the pandemic which was not disputed seriously by the learned counsel for the respondent.

4. The learned counsel for the petitioner would also contend that impugned proceedings are bad inasmuch as impugned order has traversed beyond the allegation contained in the Show Cause Notice and thus cannot be sustained and in support of the above contention would draw the attention to para 22A of the impugned order, wherein an allegation was that the petition had connived with the exporter thereby attracting Section 114 and 144aa of the Customs Act, 1962. The relevant portion of the impugned order is extracted

hereunder:

> *"22A. Therefore, Shri Devendra Kumar Yadav, Delhi was thereby called upon to show cause to the Additional / Joint Commissioner of Customs, Export Documentation Centre (EDC), Commissionerate-IV, Custom House, Chennai within 30 days as to why:*
>
> *(ii) Penalty should not be imposed under Section 114 & 114AA of the Customs Act, 1962 for conniving with exporter in Fradulently availing undue drawback / IGST?"*

However, the impugned order of assessment it was found that the petitioner is the investor for the export and thus actual exporter. The relevant portions are extracted hereunder:

> *"35.11 From the facts and circumstances of the case and documentary evidences available before me I find that Shri Devendra Kumar Yadav has misused the identity of the persons said to be exporters, Shri Pappu in case of M/s Aadhar Impex and Shri Raj Kumar in case of M/s Surbhi Fashion, with or without their knowledge which is further substantiated by the fact that his mobile no is linked to the account wherein the IGST/Drawback amount were credited Therefore, I find that Shri Devendra Kumar Yadav is the kingpin beyond the entire episode operating from behind the screen clandestinely without revealing his identity anywhere including to Shri J Vijay who was assuming that he was talking with one Shri Ranjan Mishra, the investor for the export, which the investigation revealed that it was actually Shri Devendra Kumar Yadav. All this proves the point that he is the actual exporter operating in the guise of one Shri Pappu and Shri Raj Kumar to turn the attention of the investigation and escape from the clutches of law in case his plans do not Act materialize, though investigation has not proceeded in this point of view. Hence,I hold Shri Devendra Kumar Yadav liable for penalty u/s 114 of the Customs Act, 1962 for his acts of commission and omission which have rendered the goods liable for confiscation."*

5. I do not propose to examine the above aspects, I am of the view that during the pandemic, there was difficulties faced by the litigants, therefore,

taking judicial notice, the Hon'ble Supreme Court was pleased to pass the above order / direction. For the circumstances, this Court deems it appropriate that the petitioner may be granted one final opportunity to put forth this case. The impugned order dated 15.12.2020 is set aside. The petitioner would appear before the respondent on 10.08.2023 along with his objections and supporting documents. The respondent would thereafter pass orders on merit after hearing the petitioner and considering the objections and documents filed in support during the hearing. Failure on the part of the petitioner to appear before the respondent on the aforesaid date would result in restoring the impugned order.

6. In view the above, the Writ Petitions stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

17.07.2023

Index: Yes/No
Internet: Yes/No
Speaking / Non speaking order
shk

MOHAMMED SHAFFIQ,J.

shk

To

The Joint Commissioner of Customs,
Chennai IV Customs Commissionerate,
No.60, Rajaji Salai, Customs House,
Chennai 600 001.

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