IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2023

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. Nos.8247, 8255 and 8262 of 2021 and
W.M.P. Nos.8794, 8800 and 8804 of 2021

M/s.Maersk Kine India Pvt Ltd
104/29, Thousand Lights West,
Tamil Nadu 600006
Represented by its Authorized Signatory
Mr.P.Kumaran ... Petitioner in all Writ Petitions

Vs.

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

2. Joint Commissioner of Customs,
   Chennai IV Commissionerate (UCC),
   Customs House,
   No.60, Rajaji Salai,
   Chennai 600 001. ...Respondents in all Writ Petitions

PRAYER in W.P. No.8247 of 2021: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records relating to the impugned order in Original No.78566/2020 dated 24.12.2020, vide F.No.S.Misc.34/2020-UCC passed by the 2nd Respondent and quash the same.

PRAYER in W.P.No.8255 of 2021: Writ Petition filed under Article 226 of the

Constitution of India, praying to issue a Writ of Certiorari to call for the records relating to the impugned order in Original No.78961 of 2021 dated 08.01.2021, vide F.No.S.Misc.75/2020-UCC passed by the 2nd Respondent and quash the same.

PRAYER in W.P.No.8262 of 2021: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records relating to the impugned order in Original No.78978 of 2021 dated 11.01.2021, vide F.No.S.Misc.18/2009-UCC passed by the 2nd Respondent and quash the same.

For Petitioner in : Mr.P.Giridharan,

For R1 and R2 in all Writ Petitions : Mr.S.R.Sundar

COMMON ORDER

The only question that arises for consideration is whether the impugned notices issued under Section 124 of the Customs Act, 1962 (hereinafter referred to as "the Act") in respect of consignments imported / shipped, which reached Chennai on various dates stands vitiated on account of the fact that show cause notices were issued almost 12 years after the consignments have been imported / shipped, which is beyond reasonable period, thus suffers from the vice of being arbitrary, thereby falling foul of Article 14 of the Constitution of India.

2. It is submitted by the learned counsel for the petitioner that the issuance of notices almost 12 years from the date of import is arbitrary inasmuch as though

Section 124 of the Act does not prescribe any limitaton for initiation / completion of proceeding, however all actions of the State must pass the test of reasonableness and issuance of notices after a period of 12 years suffers from the vice of unreasonable delay thereby vitiating the entire proceedings.

3. To the contrary, it is submitted by the learned Senior Standing Counsel for the Revenue that pre-shipment certificate is a condition precedent while importing any metal scrap and a duty is cast on the steamer agent to ensure that the above requirement is complied with, which is mandated under Para 2.32.1., 2.32.2(A) of the Handbook of Procedures read with Board circular No.56/2004 dated 18.10.2004. Relevance and significance of the pre-shipment certificate has been explained by the Delhi High Court in the case of *Worldwide Logistics Survey v. Union of India, 2012 SCC OnLine Del 1750 : (2012) 283 ELT 495* wherein it is held as under :

> *"7. We have examined the contiones raised by the petitioner, but are unable to agree with the same. Paragraph 2.32.1 quoted above, which is under the heading "General Procedure for Licensing of Restricted Goods" states that import of any form of metallic waste or scrap containing hazardous, toxic waste, radioactive contaminated waste, radioactive, explosive material including shells is banned. It further stipulates that live or used catridge or any other explosive material in any form either used or otherwise is also banned. It is obvious that the intention is not to allow import of any material which was earlied used as a shell into the country as scrao because of danger*

and hazard involved. We may note that the petitioner, as annexure P-6, has filed Hand Book of Procedures (Vol. I) issued by the Department of Commerce, Ministry of Commerce and Industry, Government of India. However, in Annexure P-6 one of the relevant page is missing. During the course of hearing, the missing page has been furnished by the learned counsel for the respondents. The relevant extract of the applicable clause relating to certification in the Hand Book reads as under :-

"Unshredded compressed and loose form:

Import of metallic waste, scrap listed in para 2.32.2 above in unshredded compressed and loose form shall be subject to following conditions :-

(a) Importer shall furnish the following documents to the Customs at the time of clearance of goods;

(l) Pre-shipment inspection certificate as per the format in Annexure-I to Appendix-5 from any Inspection & Certification agencies given in Appendix-5 to the effect that:

(i) The consignment does not contain any type of arms, ammunition, mines, shells, cartridgs, radioactive contaminated or any other explosive material in any form either used or otherwise.

8. A reading of the aforesaid paragraph would show that pre-shipment inspection certificate by an inspection certification agency is required to be produced / submited by the importer to the port / custom authorities. It further stipulates that certification agency must certify that the consignment does not contain any kind of arms, ammunition, mines, shells cartridges, radioactive contaminated or any other explosive in any form either used or otherwise. A reading of the impugned order would show that Commissioner of Customs (Import), Nhava Sheva has rightly rejected the contention of the petitioner that the certifying agency was not concerned with the quality/type of the scrap as they were not the importers and violation of paragraph 2.32.2 was not their concern. The extract quoted above shows the obligation and responsibility of the inspection certificate agency."

4. It is also submitted by the learned counsel of the respondent by placing reliance on the judgment of the Hon'ble Supreme Court in the case of Jeevraj v.

Collector of Customs, (1997) 8 SCC 519 and Harbans Lal v. Collector of Central Excise and Customs, (1993) 3 SCC 656 that one cannot read limitation with regard to proceedings under Section 124 of the Act in the absence of a express provision prescribing limitation. I do not propose to examine the merits or otherwise of the issue for that may require investigation into facts which is foreign to Writ Jurisdiction under Article 226 of the Constitution.

5. Now with reference to the judgments relied upon by the learned counsel for the petitioner, the issue before the Hon'ble Supreme Court on both occasions was as to whether the limitation under Section 110 of the Act which governs seizure is also applicable to proceeding under Section 124 of the Act dealing with confiscation. Section 110(2) of the Act provides that when any goods are seized and notice in respect thereof is not given under Clause (a) of Section 124 of the Act within 6 months of the seizure, the goods shall be returned to the person from whose possession it was seized. The proviso provides for extension of such period not exceeding 6 months. It was held by the Hon'ble Supreme Court that the limitation prescribed under Section 110 of the Act cannot control the provisions of Section 124 of the Act. However, the question here is whether the issuance of notices under Section 124 of the Act, 12 years after the import in Chennai Airport

can be stated to be action taken within a reasonable period. The above question becomes relevant for it is trite law that whenever the statute does not prescribe limitation for taking any action, courts have consistently held that such action must be taken within a reasonable time. In this regard, it may be relevant to refer to the following judgments:

(i)State of Punjab v. Bhatinda District Coop. Milk Producers Union Ltd., reported in (2007) 11 SCC 363:

> *"**17.** A bare reading of Section 21 of the Act would reveal that although no period of limitation has been prescribed therefore, the same would not mean that the suo motu power can be exercised at any time.*
>
> ***18.** It is trite that if no period of limitation has been prescribed, statutory authority must exercise its jurisdiction within a reasonable period. What, however, shall be the reasonable period would depend upon the nature of the statute, rights and liabilities thereunder and other relevant factors."*

(ii)S.B. Gurbaksh Singh v. Union of India, reported in (1976) 2 SCC 181:

> *"**15**.... It may well be that for an exercise of the suo moto power of revision also, the revisional authority has to initiate the proceeding within a reasonable time. Any unreasonable delay in exercise may affect its validity. What is a reasonable time, however, will depend upon the facts of each case."*

6. As discussed supra any proceedings initiated or completed after a reasonable period would suffer from the vice of arbitrariness thereby falling foul of Article 14 of the Constitution of India. If we keep the above aspect in mind though

the limitation prescribed under Section 110 of the Act may not be applicable to proceedings under Section 124 of the Act. Nevertheless, the proceedings under Section 124 of the Act ought to be initiated within a reasonable period. Now on gleaning through the provisions of the Act, the largest period for taking action is provided under Section 28 of the Act for recovery of duty in case of fraud, suppression or wilful misstatement. Keeping the scheme of the Act in mind it appears to me that impugned proceedings under Section 124 of the Act, 12 years after the date of the subject import cannot stand the scrutiny of reasonableness/arbitrariness. In this regard it may be relevant to refer to the following judgments wherein considering adjudication under various fiscal enactments which did not provide for limitation it was held that the proceedingswere illegal on the premise that the same has been made after an unreasonable delay.

(i) ***J.M.Baxi and Co. Vs. UOI*** reported in ***2016 (336) E.L.T. 285 (Mad)***:

> *"**16.** In the order of adjudication dated 07.01.2000, there is nothing to indicate as to what transpired from 23.5.1995 up to 07.01.2000, except for two dates. One is a letter dated 23.10.1999 where the appellant sought an injury to be inflicted upon them voluntarily, reminding the Department of the pendency of the show cause notice. The next date is 04.01.2000 when a personal hearing took place. Therefore, the order of adjudication certainly had not taken place within a reasonable period. Though the statute does not prescribe a period of limitation for passing an order of adjudication, the law is well settled that anything in respect of which no period of limitation is prescribed, should be done at least within a reasonable time. What is reasonable time, would depend upon the facts and circumstances of each case. In cases of this nature, where the weight of the*

cargo discharged by the vessel of a Steamer Agent is questioned, it is not possible for a Steamer Agent to defend themselves against the show cause notice long after the vessel had sailed. Therefore, the third question of law is also be answered in favour of the appellant."

(ii) ***J.Sheik Parith Vs. Commissioner of Customs and another*** reported in ***2020 (374) E.L.T. 15 (Mad.):***

*"**23.** In Premier Ltd. v. UOI (W.P. No. 12780 of 2016 dated 13.02.2017), a Division Bench of the Bombay High Court considered a challenge to the show cause - cum-demand notice dated 22.07.1991, in response to which personal hearings were fixed only in 1997. The Court held that such delay would vitiate the validity of the notice itself holding at paragraph 9 that the power to issue a show cause notice carries with it the responsibility to adjducate upon it promptly.*

*...**28.** In Sanghvi Reconditioners Pvt. Ltd. v. Union of India (2018 (12) GSTL 290), a Division Bench of the Bombay High Court considered the delay of fifteen (15) years from issuance of a show cause notice and thirteen (13) years after a hearing for fresh proceedings had been initiated by the revenue. This was also a case where the proceedings had been consigned to the call book. The petitioner in that matter succeeded on the ground that the inordinate delay had not been justified by the revenue.*

__29.__ In Transworld Shipping Services Pvt. Ltd. v. Government of India (381 ELT 178) a learned single Judge of this Court, and in Surendralal Girdharilal Mehta v. Union of India (W.P. No. 322 of 2015 dated 17.05.2018) the Calcutta High Court once again reiterated the settled position that an authority exercising power under the Statute can engage in an action that has the effect of disturbing the rights of a citizen only within the time stipulated and where such limitation was not stipulated, within a reasonable time."

*(iii)**Kanthimathy Estate vs. The Assistant Commissioner Commercial Taxes*** in ***W.P.(MD)Nos.3056 of 2016 etc., batch***:

"7. It is thus clear that a dealer is required to statutorily maintain and preserve books of accounts and all documents connected and ancillary to its business only for a period of five years from the date on which the assessment relating to that year had become final. In the present case, the periods of assessment stretch from 1989-1990 to 1994-1995. The pre-assessment notices have been sent only on 23.08.1999 and proceedings completed in 2015. Thus even

on this score, the time taken for conclusion of proceedings appears inordinately delayed and it thus unacceptable . The impugned orders are quashed."

7.Applying the reasoning contained in the above judgments it leaves no room for any doubt in my mind that the impugned proceedings under Section 124 of the Act, 12 years after the import is liable to be set aside on the ground of unreasonable delay. Thus the impugned proceedings are set aside. The writ petitions stand disposed of. No costs. Consequently, connected miscellaneous are closed.

21.12.2023

Speaking (or) Non Speaking Order
Index:Yes/No
Neutral Citation: Yes/No
spp/ mka

To:

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

2. Joint Commissioner of Customs,
   Chennai IV Commissionerate (UCC),
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MOHAMMED SHAFFIQ, J.

spp/mka

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