IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2023

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. Nos.8597,8600 and 8602 of 2021 and
W.M.P. Nos.9147, 9150, and 9151 of 2021

M/s Maersk Line India Pvt Ltd
104/29, Thousand Lights West,
Thousand Lights, Chennai,
Tamil Nadu 600 006.
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.8597 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.78558/2020 dated 24.12.2020 vide F.No.S.Misc.61/2020-UCC passed by the 2nd Respondent and quash the same.

PRAYER in W.P. No.8600 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.79068/2021 dated 20.01.2021 vide F.No.S.Misc.226/2020-UCC passed by the 2nd Respondent and quash the same.

PRAYER in W.P. No.8602 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.79066/2021 dated 20.01.2021 vide F.No.S.Misc.226/2020-UCC passed by the 2nd Respondent and quash the same.

For Petitioner : Mr.R.Giridharan

For Respondents : Mr.M.Santhanaraman

COMMON ORDER

All these three writ petitions are filed challenging the Order in Original dated 24.12.2020 and 20.01.2021 on the premise that the very initiation by the issuance of the show cause notices made 9 to 11 years from the date of the subject import suffers from the vice of being unreasonable and arbitrary thereby falling foul of the Article 14 of the Constitution of India. The following table is relevant in this regard:

S.No.	***W.P. No.***	***Show Cause Notice***	***Bill of Entry***	***Order in Original***
1	8597 of 2021	03.12.2020	16.04.2009	24.12.2020
2	8600 of 2021	06.01.2021	20.07.2011	20.01.2021
3	8602 of 2021	06.01.2021	14.06.2012	20.01.2021

2. Brief Facts:

The petitioner is a private limited company incorporated under the Indian Companies Act, 1956 and carries on business as container owners/carriers and other shipping related activities/business. The petitioner as part of its business receives for export and import containers from and out of all ports in India for export and from and all ports outside India for import. The petitioner was approached by M/s. Global Overseas Indian, Chennai to import various shipments at Chennai Port, India. In respect of these shipments, Bills of Lading were issued. The said consignments were shipped on board the Vessel during the months of April 2009, July 2011 and June 2012 and subsequently reached Chennai. The consignments were discharged from the Vessel on various dates in good order and condition. The petitioner filed IGM (Import General Manifest) for the above imports. It is further submitted that thereafter, the petitioner nominated the container freight station M/s.SICAL Multimodal Rail Transport Ltd, Container. Thereafter, the petitioner understood that since the imported consignments were not cleared by the importer M/s.Global Overseas India, Chennai, within the prescribed period, the goods were examined and valued by M/s.ACE Consultants. Further, the petitioner understood from the show cause notices that the Preventive Officer (CFS) confirmed that the goods imported were Steel Scrap / Secondary Defective Mild Steel Bars.

3. The petitioner was issued with show cause notices proposing to invoke Section 124 of Act against the petitioner. However, due to COVID pandemic and the lock down that was imposed the officials of the petitioner were working

from home and did not have access to the document which is related to the year 2009. The petitioner forwarded the Show Cause Notice through its customer service department in Mumbai and sought for details to respond to the Show Cause Notice. In view of the above unprecedented circumstance the petitioner was unable to reply to the show cause notice. The 2nd respondent proceeded to pass impugned orders dated 24.12.2020 and 20.01.2021 imposing penalty on the petitioner under Section 112 of the Act.

4. The petitioner has challenged the impugned order on the premise that the very initiation by issuance of show cause notices 9 to 11 years after the subject import is beyond reasonable period and thus arbitrary and illegal.

5. To the contrary it is submitted by the learned counsel for the respondent that there is an effective alternative remedy against the impugned orders by way of an statutory appeal under Section 128 of the Act. Though in the counter it is submitted that the import has not complied with requirements / mandate prescribed under the Foreign Trade Policy.

6. I do not propose to examine the correctness or otherwise of the above submission and intend to confine myself to the question as to whether the

issuance of notices culminating in the impugned orders 9 to 11 years after the subject import suffers from the vice of being unreasonable or can it be sustained.

7. It was submitted by the learned counsel for the respondent by placing reliance on the counter that the contention of the petitioner is untenable for in the absence of any time limit prescribed by the statute, it is impermissible to read any limitation.

8. Heard both sides and perused the material on record.

9. Section 124 of the Act which provides for confiscation, does not prescribe any period of limitation. 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."*

10. Thus any proceeding 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. Now what would constitute a reasonable period for taking any action or passing an order would depend on the scheme of the Act and the nature of rights and obligations flowing therefrom and the facts of the case. Keeping the above aspect in mind and 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. That gives an indication of what could be a reasonable period for taking action / passing orders under the Customs Act where no limitations is statutorily prescribed. 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 proceedings were 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.*
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> *...**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.*
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> ***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."*

11. In my considered view, the impugned proceedings under Section 124 of the Act, 9 to 11 years after the date of the subject import cannot stand the scrutiny of reasonableness/arbitrariness inasmuch as any proceedings under Section 124 of the Act, 9 to 11 years after the import is unreasonable. Thus the impugned proceedings are set aside. The writ petitions stand disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

21.12.2023

Speaking (or) Non Speaking Order
Index:Yes/No

Neutral Citation: Yes/No
Spp/mka

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MOHAMMED SHAFFIQ, J.

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