IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 13.09.2023
Coram
The Hon'ble Mr.Justice **C.Saravanan**

W.P.Nos.19314 and 19317 of 2023
and
W.M.P.Nos.18567, 18571, 18576 and 18577 of 2023

Tvl. Jeyamimpex
rep. by its Sole Proprietor,
Mr.C.Karuppaswamy.
...Petitioner in W.P.No.19314 of 2023

Tvl.Sri.Jayalakshmi Enterprises,
rep. by its Sole Proprietor,
Mr.S.Paramasivam.
...Petitioner in W.P.No.19317 of 2023
Vs.

1. The Additional Commissioner of Customs (GR.2)
   Office of the Commissioner of Customs,
   Chennai -II (Imports) Customs House,
   No.60, Rajaji Salai, Chennai – 600 001.

2. The Additional Director,
   Directorate of Revenue Intelligence,
   25, Gopalakrishna (Iyer) Road, T.Nagar,
   Chennai -600 017.
...Respondents

Common Prayer :-

Writ Petitions filed under Article 226 of the Constitution of India to issue a writ of certiorari, call for records pertaining to the impugned Order-in-Original No.51 of 2023, dated 31.03.2023, passed by the first respondent and to quash the same.

For Petitioners : Mr.Hari Radhakrishnan

For Respondent-1 : M/s. Anu Ganesan
Standing Counsel
For Respondent-2 : Mr.V.Sundareswaran
Senior Panel Counsel

Common Order

Since the issue involved is identical in nature, both the Writ Petition were heard together are disposed of vide this common order.

2. In both the Writ Petitions, the petitioners have challenged the Order-in-Original No.51 of 2023, passed by the first respondent, dated 31.03.2023. The impugned orders are culmination of proceedings initiated vide Show Cause Notice dated 30.12.2013, of the second respondent.

3. The petitioners have challenged the impugned order on the grounds that the impugned order has been passed contrary to the limitation prescribed under Section 28 (9) of Customs Act, 1962 (hereinafter, referred to as 'the Act'). In this connection, learned counsel has placed reliance on the decision of Hon'ble Division Bench of Delhi High Court, rendered in the case of **Swatch Group India Pvt. Ltd., Vs. Union of India and others, dated 16.08.2023**, wherein, it was held that w.e.f. 29.03.2018, it is mandatory for the proper officer to adjudicate the Show Cause Notice issued after the amendment made to Section 28 (9) of the Customs Act by the Finance Act, 2018, within a period of six months or one year of the date of issuance, as the case may be.

4. It is further submitted that despite the fact that the petitioners have taken a categorical stand in their reply to the Show Cause Notice, dated 17.03.2023 that the adjudication of the Show Cause Notice, dated 30.12.2013 is barred by limitation in terms of said Section, impugned order fails to answer any of the question raised by the petitioners, regarding the limitation aspect.

5. It is further submitted that, referring a case to a Call book under the statute was recognized for the first time only after amendment to Section 28 (9) was made i.e. w.e.f. 29.03.2018, and therefore, there was no justification on the part of the respondents in not adjudicating the Show Cause Notice dated 30.12.2013 on an earlier date, within a limitation prescribed i.e. within a period of one year or such extended period as per Section 28 (9) of Act. Therefore, the learned counsel prays to quash the impugned order.

6. Per contra, the learned counsel appearing for the respondents defended the impugned order by contending that at the time, when the Show Cause Notice dated 30.12.2013 was issued by the second respondent, there was a conflicting view of the Hon'ble Supreme Court, in **Commissioner of Customs Vs. Syed Ali's,** which was later clarified by the **Hon'ble Supreme Court on 17.10.2016,** in **Canon India Pvt Ltd. Vs. Commissoiner of Customs** in **(2021) 376 ELT 3 (S.C.).**

7. It is submitted that there was validation in the Finance Act, 2022 and therefore, the Show Cause Notice, which was issued on 30.12.2013, was adjudicated on 31.03.2023. Further, the learned counsel submitted that at the time, when the Show Cause Notice was issued on 30.12.2023, there were several challenges to similar Show Cause Notices issued by the Directorate of Revenue Intelligence, the second respondent herein, and therefore, the Department was conscious not to adjudicate the Show Cause Notice earlier within the period.

8. It is further submitted that the procedure of referring the case to the Call Book is not a new. Earlier, it was used pursuant to the Circular issued by the Board under section 151 (A) of the Act. Later w.e.f. 29.03.2018, it has been incorporated in the statute under sub section to Section 28 (9) of the Act. Therefore, the learned counsel submitted that the impugned order does not call for an interference. Hence, it is submitted that the impugned Order sustainable in law.

9. I have considered the arguments advanced by the learned counsel for the petitioners and the respondents.

10. The impugned Order prima facie is not sustainable as it has been passed beyond the period prescribed under Section 28(9) of the Act. The petitioner, in their reply to the show cause sought the reasons for not adjudicating the Show Cause Notice within the limitation period prescribed in terms of Section 28 (9) of the Act, it was incumbent on the part of the respondent to have answered the point and given reasons. Instead, the Impugned Order has been straight away slapping the petitioners with duty and penalty.

11. Therefore, the impugned Order in Original No.51 of 2023 dated 31.03.2023 is set aside and the case is remitted back to the first respondent to pass fresh orders, on merits and in accordance with law, incorporating all the details within a period of three months from the date of receipt of a copy of this order. Needless to say, the petitioner shall be heard. No costs. Consequently, connected Miscellaneous Petitions are closed.

13.09.2023

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Index : Yes/No

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C.Saravanan,J.
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