HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-2782-2023 (O&M)
Reserved on: 29.09.2023
Pronounced on: 20.10.2023

TRB International Ludhiana ....Petitioner

V/s.

Commissioner of Customs ....Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Ms. Radhika Suri, Senior Advocate with
Mr. Naveen Bindal, Advocate,
Mr. Abhinav Narang, Advocate and
Mr. Mukul Singla, Advocate
for the petitioner.

Mr. Sourabh Goel, Advocate,
Ms. Shivani Sahni, Advocate and
Mr. Tej Bahadur, Advocate for
the respondent.

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Ritu Bahri, J.

The petitioner is seeking writ of prohibition restraining the respondent from adjudicating show cause notices both dated 28.01.2022 (Annexures P-1 and P-2) being barred by limitation in terms of Section 28(9) of the Customs Act, 1962 (hereinafter referred to as ‘the Customs Act, 1962’) with further prayer that the proceedings be deemed to be concluded in view of second proviso of Section 28(9) of the Act, 1962.

2. The brief facts of the case are that the petitioner is a proprietorship concern and is engaged in the business of import and supply of various goods including textile related items, sports goods and dry dates and for this purpose, the petitioner is having IEC No. BNLPS3321M.

3. The petitioner had imported 9 consignments of dry dates from

January, 2020 to February, 2020 and filed bills of entry accordingly for home consumption. The said goods were imported from Jebel Ali, Dubai, however the country of origin of the said goods was Saudi Arabia. The details of bills of entry filed by the petitioner are as under:-

<table>
<tr><td>S. No.</td><td>BE No.</td><td>Date</td><td>Quantity (Gross Weight Kg)</td><td>Country of origin</td><td>Exporter of Goods from Dubai</td></tr>
<tr><td>1.</td><td>6397102</td><td>08.01.2020</td><td>55550</td><td>Saudi Arabia</td><td rowspan="9">Manchester Shipping LLC, Dubai</td></tr>
<tr><td>2.</td><td>6392966</td><td>08.01.2020</td><td>26512</td><td>Saudi Arabia</td></tr>
<tr><td>3.</td><td>6396602</td><td>08.01.2020</td><td>539642.5</td><td>Saudi Arabia</td></tr>
<tr><td>4.</td><td>6392101</td><td>08.01.2020</td><td>26512</td><td>Saudi Arabia</td></tr>
<tr><td>5.</td><td>6612442</td><td>24.01.2020</td><td>53025</td><td>Saudi Arabia</td></tr>
<tr><td>6.</td><td>6531457</td><td>18.01.2020</td><td>55550</td><td>Saudi Arabia</td></tr>
<tr><td>7.</td><td>6924057</td><td>18.02.2020</td><td>54540</td><td>Saudi Arabia</td></tr>
<tr><td>8.</td><td>6922118</td><td>18.02.2020</td><td>80721</td><td>Saudi Arabia</td></tr>
<tr><td>9.</td><td>6923771</td><td>18.02.2020</td><td>53025</td><td>Saudi Arabia</td></tr>
</table>

4. That six out of nine consignments imported by the petitioner were cleared by the customs department on the basis of documents filed by the petitioner and goods imported vide three bills of entry were seized vide seizure memo dated 04.05.2020. During the course of enquiry, statements of the petitioner were recorded on 31.08.2020 and 02.09.2020. Overseas enquiry was purportedly conducted in the matter and Transshipment Import Declarations were obtained from Federal Customs Authority, UAE in respect of eight bills of entry. On the basis of transshipment bills of entry allegedly received from Federal Customs Authority, UAE, the respondent opined that the goods were allegedly of Pakistan origin and the petitioner had routed the same through Dubai and falsely declared the said goods to be of Saudi Arabia origin to evade custom duty @ 200% in terms of

notification No. 05/2019-Customs dated 16.02.2019.

5. The respondent department, thereafter, issued two show cause notices both dated 28.01.2022 (Annexures P-1 and P-2) to the petitioner and the relevant extract of the said show cause notices are reproduced as under:-

> 1) The dry dates imported vide Bills of Entry 6397102 dated 08.01.2020, 6392966 dated 08.01.2020, 6396602 dated 08.01.2020, 6392101 dated 08.01.2020 and 6612442 dated 24.01.2020 should not be classified under CTH 98060000 and held liable to confiscation under Section 111(d) & 111(m) of the Customs Act, 1962;
>
> (ii) Customs duty amounting to Rs. 8,64,01,393/-, as detailed in Annexure-A, should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962;
>
> (iii) Penalty should not be imposed upon them under Section 114A and Section 114AA of the Customs Act, 1962;
>
> (i) The dry dates imported vide Bills of Entry 6924057 dated 18.02.2020, 6922118 dated 18.02.2020 and 6923771 dated 18.02.2020 should not be classified under CTH 98060000 and held liable to confiscation under Section 111(d) & 111(m) of the Customs Act, 1962, and in case the officer adjudging the confiscation allows an option to pay fine in lieu of confiscation the Customs Duty amounting to Rs. 1,57,55,783/-, should not be demanded and recovered from them under Section 125(2) of the Customs Act, 1962 read with Section 28(4) ibid along with applicable interest under Section 28AA of the Customs Act, 1962;
>
> (ii) The dry dates imported vide Bills of Entry 6531457 dated 18.01.2020 should not be classified under CTH 98060000 and held liable to confiscation under Section 111(d) & 111(m) of the Customs Act, 1962 and differential customs duty amounting to Rs. 58,52,195/-, as detailed in Annexure-A, should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962;
>
> (iii) Penalty should not be imposed upon them under Section 114A and Section 114AA of the Customs Act, 1962;

6. The show cause notices are being challenged on the following grounds:-

1. As per Section 28(9) of the Act, 1962 the proper officer has

to adjudicate the show cause notice, if issued under Section 28(4) within one year from the date of issuance of show cause notice.

2. The extension in time for passing order can be given by officer senior in rank to the proper officer.

3. The proper officer shall inform the person concerned for non-passing of order.

7. The petitioner has placed on record notice dated 05.12.2022 (Annexure P-3) vide which the personal hearing was fixed for 12.12.2022. Vide letter dated 09.12.2022 (Annexure P-4), the petitioner sought time to file reply. Again vide notice dated 12.12.2022 (Annexure P-5), the date was fixed as 26.12.2022 for personal hearing. The petitioner again sought time to file reply vide letter dated 26.12.2022 (Annexure P-6). The respondent again issued notice dated 19.01.2023 (Annexure P-7) whereby personal hearing was fixed on 01.02.2023. The petitioner appered before the respondent on 01.02.2023 and submitted his submissions dated 31.01.2023 (Annexure P-8) that proceedings should have been concluded in the absence of determination of duty/interest within one year from the date of issuance of show cause notices and the petitioner requested the respondent not to proceed further for adjudication of the case.

8. The petitioner, thereafter, filed additional submissions dated 01.02.2023 (Annexure P-9) before the respondent stating that no intimation of purported extension was given to the petitioner. He referred to the judgment passed by this Court in ***Shri Ram Agro Chemicals Pvt. Ltd. Vs. Union of India and others, 2019 SCC Online P&H 4918*** in which it was held that wherever an opportunity of personal hearing has to be given, it

should be afforded and extension should be granted after recording reasons.

9. The grievance of the petitioner further is that without considering the reply/submissions dated 31.01.2023 (Annexure P-8) and additional submissions dated 01.02.2023 (Annexure P-9), the respondent fixed personal hearing on 10.02.2023 vide notice dated 03.02.2023 (Annexure P-10) and made clear that the respondent wanted to adjudicate the subject show cause notices.

10. On 10.02.2023, when notice of motion was issued, learned counsel for the petitioner has referred to the judgment passed in ***M/s. Ram Agro Chemicals Pvt. Ltd.'s case (supra)*** and ***A.B. Sugars Ltd. vs. State of Punjab 2009 SCC Online P&H 7874*** on the proposition that before the extension of time to pass order, it is mandatory to give notice and personal hearing to the assessee.

11. After service, written statement dated 11.04.2023 has been filed by the respondent and in the preliminary submissions, the respondent has referred to Supreme Court judgment passed in the case of ***Tita Nagar Paper Mills Ltd. vs. State of Orissa 1983 SC 603, Constitutional Bench judgment in case of G. Veeappa Pillai vs. Raman & Raman Ltd. AIR 1952 SC 192, Assistant Collector of Central Excise vs. Dunlop India, AIR 1985 SC 330, Simplex Infrastructure Limited vs. Union of India-2015 (321) ELT A 208(SC), Commissioner of Cust & Cex. vs. Charminar Nonwovens Ltd. Reported as 2004(167) ELT 372 (SC), Punjab Tractors Ltd. vs.Union of India-1999 (113) ELT A181SC*** and the judgment passed by the Division Bench of Madras High Court in ***Maritime Collector vs. Madura Court Ltd. 2010 (259) ELT 37*** on the proposition that in tax matter, there should be no short circuiting of statutory remedy of appeal and as far as disputes are

concerned, alternate remedy of filing appeal is available and the High Court should not invoke the extraordinary jurisdiction of Article 226 of the Constitution of India.

12. It is further stated that the petitioner had misdeclared country of origin as **"Saudi Arabia"** in respect of Bill of Entry whereas on an inquriy being conducted by the investigating agency, it was noticed that in transshipment import declarations filed before Dubai Customs, the country of origin was clearly mentioned as **"Pakistan"** and the port of shipment of all the goods covered by the Bills of Entry was Karachi. Further, it was also seen from Transshipment Bill of Entry that the ***dry dates with Pakistan as country of origin were shipped from Karachi, Pakistan with final destination 'India' and the exit port being 'Jebel Ali' Saudi Arabia.***

13. The petitioner did not cooperate with the adjudicating authority and failed to submit reply even after 10 months from the date of issuance of show cause notice, whereas he was called upon to file reply within 30 days from the receipt of the show cause notice. The petitioner was given dates for personal hearing and it sought adjournments even for personal hearing. The time spent in granting adjournments to the petitioner for personal hearing and to file its defence was the main reason for giving extension of time beyond one year by the competent authority for passing the adjudicating order.

14. The show cause notice was issued to the petitioner on 28.01.2022 and the petitioner failed to file reply even after 10 months from the date of issuance of show cause notice whereas it was to file reply within 30 days. The petitioner, as per the dates taken by it, deliberately requested to postpone the personal hearing so that time for issuance of show cause

notice may lapse and the petitioner can take advantage of Section 28(9) of the Act, 1962. On 01.02.2023, the petitioner attended first personal hearing and at that time, he was made aware of extension of one year for adjudication of the case which was granted by the Chief Commissioner of Customs under Section 28(9). Copy of the extension letter dated 15.12.2022 granted by the Chief Commissioner of Customs is annexed as Annexure R-1.

15. The judgment cited by learned counsel for the petitioner in ***M/s. Ram Agro Chemicals Pvt. Ltd.'s case (supra)*** is distinguishable on facts. The petitioner in that case had filed reply before initiation of adjudication of proceedings and also attended personal hearing on 22.10.2012. It was only that the Department after 5 years had again fixed personal hearing on 09.05.2017 and in these circumstances, writ petition filed by ***M/s. Ram Agro Chemicals Pvt. Ltd.*** was allowed.

16. In para 12 of the reply, it is further stated that the case of the petitioner was kept pending in terms of the decision of Hon'ble Supreme Court dated 09.03.2021 in ***Civil Appeal No. 1827/2018 in the case of M/s. Canon India Private Limited vs. Commissioner of Customs*** and was placed in call book category on the show cause notice issuing authority. The said case was taken out from call book category on 15.06.2022. Subsequently, the Government amended the Customs Act, 1962 retrospectively vide Finance Act, 2022 and issued notifications dated 31.03.2022 read with Board's circular No. 07/2022-Cus dated 31.03.2022 vide which the period of one year has to be counted w.e.f. 01.04.2022. Hence for all intents and purposes, the case of the petitioner was not barred by limitation. Further the

judgment referred by the petitioner in ***M/s. AB Sugar Limited's case (supra)*** is not applicable as the principles of natural justice have been duly followed. The petitioner attended first personal hearing on 01.02.2023 and at that time, it was made aware of extension of one year for adjudication of the case which was granted by the Chief Commissioner of Customs under Section 28(9) as per letter dated 15.12.2022 (Annexure R-1).

17. Vide CM-16468-CWP-2023, replication dated 21.09.2023 was taken on record. Vide CM-16662-CWP-2023, the petitioner has placed on record letter dated 09.12.2022 (Annexure P-12) which the petitioner has got under RTI Act, 2005 whereby extension of time was sought for adjudication of the show cause notice from Chief Commissioner of Customs, New Delhi.

18. As per the facts given by the petitioner in the writ petition, the petitioner was aware about the notice dated 05.12.2022 (Annexure P-3) and, thereafter, adjournments were sought by the petitioner for personal hearing as well as for filing reply, as per details given in para No. 7 of the writ petition. The petitioner appeared for the first time for personal hearing on 01.02.2023 and it was made aware of the extension granted for adjudication of the case by Chief Commissioner of Customs under Section 28 (9) of the Act, 1962, vide letter dated 15.12.2022 (Annexure R-1).

19. The above said facts clearly make out that it was on account of non-appearance of the petitioner that the matter was kept adjourned and the same was not concluded. As per the petitioner, it had placed on record the submissions dated 31.01.2023 (Annexure P-8) and additional submissions dated 01.02.2023 (Annexure P-9). These submissions were placed on record by the petitioner after the extension was granted vide letter dated 15.12.2022

(Annexure R-1) and since the petitioner itself has taken time, after issuance of notices both dated 28.01.2022 (Annexures P-1 and P-2) for filing reply, the delay cannot be attributed to the respondent for not adjudicating show cause notices. Moreover, the extension was rightly granted, keeping in view letter dated 09.12.2022 (Annexure P-12), placed on record by the petitioner.

20. In view of the above, no ground to entertain the present writ petition and restraining the respondents from adjudicating show cause notices both dated 28.01.2022 (Annexures P-1 and P-2) is made out.

21. Writ petition is dismissed accordingly. Pending application, if any, also stands disposed of.

(RITU BAHRI)
JUDGE

20.10.2023
Divyanshi

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No