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W.P.No.9531 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.04.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.9531 of 2021
W.M.P.No.10128 of 2021

M.Pradeep Dadha

... Petitioner

Vs.

1. The Assistant Director,
Directorate of Enforcement,
O/o. Joint Director, Zone-II,
Shastri Bhavan, "B" Wing,
5th Floor, 3rd Block,
No.26, Haddows Road,
Chennai - 600 006.
2. The Deputy Director,
Adjudicating Authority (FEMA),
Directorate of Enforcement,
O/o. Joint Director, Zone-II,
Shastri Bhavan, "B" Wing,
5th Floor, 3rd Block,
No.26, Haddows Road,
Chennai - 600 006.

... Respondents

Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records relating to the show cause notice issued in File No.T4/CEZO-II/05/2020-DD dated 23.11.2020 by the second respondent and quash the same.



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For Petitioner : Mr.A.Ramesh Kumar

For Respondents : Mr.N.Ramesh
Special Public Prosecutor, ED cases

ORDER

This writ petition has been filed challenging the show cause notice issued by the second respondent dated 23.11.2020, under the Foreign Exchange Management Act, 1999.

2. The petitioner is the Director of Pradeep Grop of Companies and it was engaged in the business of exporting medicines by way of international trade through exports. It had entered into agreement with the other companies, who sourced the medicines for their customers in other country. In the course of business, the client companies would send advance payments and against the said remittances, the petitioner's company used to fulfill the orders placed by the customers by raising invoices in the name of the said customers and all the said medicines would be send through speedy post of Indian postal department. After completion of dispatch of goods, copies of all documents are handed over to the concerned authorized dealer bank. The payments also made to the postal authorities on a monthly basis based on the invoices raised by



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them. The payments were supported by a bank guarantee provided by the company. The petitioner has filed respective sales tax returns and income tax returns and showed the exports in the balance sheet before the Registrar of Companies for the financial years 2004 to 2020.

3. While being so, on 29.06.2016, ICICI Bank, the authorized dealer under the Foreign Exchange Management Act, 1999 (hereinafter referred to as "FEMA"), had sent a letter to the Enforcement Directorate, Chennai, stating in their books of accounts relating to the petitioner company that there was an inward remittance through their bank to the tune of 51,149.72 US Dollar (INR 17,98,932/-) as on 21.11.2007. Further ICICI had reported that the petitioner company which received the inwards remittance was not traceable. According to the petitioner all the necessary documents have been submitted to the authorized dealer viz., ICICI Bank during the traction period from time to time. Due to gross negligence on their part, ICICI Bank has failed to update their records. Now after a lapse of nearly twelve years, the ICICI bank raised a letter before the second respondent. In pursuant to the same, Enforcement Directorate started investigation against the petitioner. Accordingly, the



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petitioner was summoned on several times and several statements were recorded under Section 40 of the FEMA. Under FEMA, after receipt of advance, export have to be made within a period of one year or if it could not be done for any reason, then an application to RBI could be made for extension.

4. Thereafter, the petitioner approached the Customs Department as well as as the postal authorities to provide the company with details of exports made, permission accorded and the exports made through post. The petitioner was informed that they do not preserve records, much less after fourteen years. Thus, the delay in initiating action have gravely prejudiced the petitioner as it will not be possible for the company to establish details of exports having been made within the time after receipt of inward remittance, on account of the delay of fourteen years in initiating the proceedings. Further the case of the petitioner is that all of a sudden a complaint is lodged by the Enforcement Directorate and on the basis of the complaint, now show cause notice issued by the second respondent seeking to impose penalty on the allegation that there are outstanding of export to the extent of Rs.2,39,82,176.76.



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5. Heard the learned counsel appearing on either side and perused the material placed before this Court.

6. On perusal of the counter and also on the submission made by the learned Special Public Prosecutor appearing for the respondents revealed that by the report dated 29.06.2016, the ICICI bank had furnished a detailed of doubtful and chronic defaulters' cases of over due advance payments received against export of goods. Further reported that the petitioner had received USD 51,1479.72 on 21.11.2007 and it is not traceable. Based on the said information, investigation has been commenced under FEMA. The ICICI also furnished account opening form, KYC documents, statements of account and foreign inwards remittances details in respect of the account held by the petitioner's erstwhile company. As per the details, USD 5,62,905.2/- and GBP 23,482,44/- received by the petitioner's company were outstanding.

7. The petitioner from the year 2014 to 16 was non-resident Indian as per FEMA. He was holding bank account with the Bank of Baroda, UAE and he was drawing a salary from various companies



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during the said period for offering consultancy services. In the month of July 2015, he had invested USD 40,872/- in M/s. Trisa Jewellers FZE, UAE. In the year 2019, NCLR merged M/s. Trisa Jewellers FZE, UAE with M/s.Dadha Pharma Pvt. Ltd., India. Further, the petitioner by a letter dated 10.06.2020, admitted that there were 71 foreign inward remittances aggregating to USD 10,39,930.09 received during the financial year 2006-07, 2007-08 and 2008-09.

8. Further admitted that his company had received inward remittances as advance payment through ICICI Bank, Axis Bank and City Bank totaling to USD 5,48,367.89 for the period of 01.04.2007 to 31.03.2008 and USD 4,15,225.84 during the period 01.04.2008 to 31.03.2009. Further, the petitioner also admitted all exports were made through speed post, Indian postal department. In accordance with Regulation 6(B) of Foreign Exchange Management (Export of goods & services) Regulation, 2000, the exporter has to submit form PP to the authorized dealer, who has to counter sign the declaration and the same should be submitted to postal authorities through which the goods are dispatched.



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9. The petitioner did not furnish the copies of form PP filed before the postal authorities as proof of having made the exports. After lodging the complaint, the petitioner was issued with show cause notice. The learned Special Public Prosecutor appearing for the respondents relied upon the judgment reported in **2017 SCC OnLine Kar 7001** in the case of **D.Venugopal Vs. Assistant Director and anr.**, which reads as follows :-

“21. In issuing the show cause notice, Adjudicating Authority has placed reliance on several documents annexed to the complaint. In paragraph 35, it is specifically stated that in case it was decided to hold adjudication proceedings, personal hearing of the case could be waived at their request. However, in paragraph 36 of show cause notice, petitioners have been notified that they would be required to appear either in person or through legal practitioner duly authorised by them to explain and produce such documents or evidences, as may be useful for or relevant to the subject matter of enquiry, and in case, any of the noticees fail, neglect or refuse to appear before the undersigned on the appointed date and time, the adjudication proceedings shall proceed against such noticee ex-parte.



22. *Therefore, sum and substance of the notice makes it very clear that specific allegations made against petitioners have been reproduced with reference to different provisions of the Act and the Rules and petitioners have been called upon to submit their explanation. Fact that in case it was decided to hold adjudication proceedings, question regarding grant of personal hearing, waiver of personal hearing, engaging services of counsel of their choice were open to petitioners, is also forthcoming from the show cause notice. This being the position, it cannot be said that adjudicating authority who has issued the show cause notice has predetermined the issue and has already formed an opinion regarding involvement of petitioners in the alleged violation of the provisions of the Act and the Rules.*

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24. *It is apparent from the materials on record that adjudication process has not yet started. It is well established by a catena of decisions of the Apex Court that High Court will not entertain a petition under Article 226 of the Constitution, if an effective alternative remedy is available to the aggrieved person or the statute under which action complained of has been taken, itself contains a mechanism for redressal of the grievance. this principle is well enunciated in the case of*



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Nivedita Sharma Vs. Cellular operators association of India - (2011) 14 SCC 337. in fact, the apex court in the case of Special Director and another vs. Mohd. Ghulam Ghouse and another - (2004) 3 SCC 440, has deprecated the practice of High Courts entertaining writ petitions questioning the legality of the show-cause notices, thereby stalling enquiries retarding investigative process initiated to find actual facts with the participation and in the presence of the parties unless the petitioner established absolute want of jurisdiction or authority to even investigate into facts. It is observed in this context that writ petitions should not be entertained and the petitioner should invariably be directed to respond to the show-cause notice.

25. Perusal of the impugned notice does not disclose that respondent - adjudicating authority has predetermined the issue. Unless show cause notice contains all specific details regarding the nature of violation, quantum of violation alleged, it will suffer from want of details so as to enable effective reply from petitioner. Therefore, when full details are given regarding the allegations made based on complaint and documents produced, show cause notice cannot be characterized as one that predetermines the issue.”



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10. Further the petitioner was served with only show cause notice. The Rules of FEMA provides a complete network of provisions adequately structuring rights and remedies available to a person who is aggrieved by any adjudication under FEMA. After receipt of show cause notice and on submitting reply, the Adjudicating Authority may take a decision to proceed in the matter or not to proceed. Thereafter, full opportunity will be given to the petitioner. If it is found that the petitioner is guilty, then there is a provision of appeal before the appellate authority.

11. Further the show cause notice can be challenged only on the ground of malafide and jurisdiction. Admittedly, the second respondent has all jurisdiction to issue show cause notice. Further it is not the case of the petitioner that action has been taken malafidely and did not raise any malafide ground on the second respondent for issuance of show cause notice. Therefore, the writ petition cannot be entertained questioning the legality of the show-cause notices, thereby stalling enquiries retarding investigative process initiated to find actual facts with the participation and in the presence of the parties unless the petitioner established



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absolute want of jurisdiction or authority to even investigate into facts.

That apart, when full details are furnished with regard to complaints in the show cause notice, it cannot be quashed. Hence this Court finds no infirmity or illegality in the show cause notice issued by the second respondent. The prayer sought for in this writ petition is devoid of merits and liable to be dismissed. However, the petitioner is at liberty to submit his explanation with all available records.

12. Accordingly, the Writ Petition stands dismissed. Consequently, connected miscellaneous petition is also closed. There shall be no order as to cost.

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Index : Yes/No
Speaking/Non Speaking order
Neutral Citation : Yes/No

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G.K.ILANTHIRAIYAN. J.

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