



WEB COPY



W.P.No.17464 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2024

CORAM :

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.17464 of 2024
and
W.M.P.Nos.19255 & 19256 of 2024

M/s Amg Sports
Rep. by its Executive Associate,
Mr. L.N. Ajay Kaushik

... Petitioner

Versus

1.The Principal Additional Director General,
Directorate of Revenue Intelligence Wing,
Chennai Zonal Unit,
No.27, G.N. Chetty Road,
T. Nagar, Chennai – 600 017.

2.The Commissioner of Customs,
Chennai-II (Import) Commissionerate,
Custom House, Chennai-600 001.

3.The Senior Intelligence Officer,
Directorate of Revenue Intelligence,
Sub-Regional Unit, No.7-1-32,
Mahathma Gandhi Nagar,
Main Road, Madurai-625 014.

4.The Additional Commissioner of Customs,
Commissionerate of Adjudication Unit,
Import Commissionerate,
Custom House, Chennai-600 001.

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India pleased to issue a Writ of Certiorari, to call for the records of the Third Respondent under Seizure Memorandum dated 03.11.2021 in the Proceedings bearing F.No.DRI/CZU/ MDU/VII/48 /ENQ-I/ INT-05/2021 against seizure of past imported goods under Bills of Entry Nos.(5419703 dated 13.09.2021, 5452041 dated 15.09.2021 and 4760966 dated 21.07.2021) following Look Out Notice dated Nil which was not served on the Petitioner - and to withdraw the same as well as to rescind the Show Cause Notice bearing No.84/2023 dated 30.10.2023 issued under Sec.28 (4) read with Sec. 124 and Sec.110A of the Customs Act, 1962 vide Proceedings No. F. No. GEN/ADJ/COMM/665/2023-GR 6 on the file of the Second Respondent, and quash the same with the consequential direction to the Respondents to remove the order of Seizure dated 03.11.2021 as well as the Look Out Notice, thereby, enabling the Petitioners Director to take part in the Proceedings in accordance with law.

For Petitioner : Mr. Haja Nazarudeen, Senior Advocate.

For Respondents : Mr. V. Sundareswaran, (for R1 & R3)
Senior Standing Counsel.

: Mr. H. Siddarth, (for R2 & R4)
Junior Standing Counsel.

ORDER



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By this writ petition, a partnership firm assails the seizure memorandum dated 03.11.2021, show cause notice dated 30.10.2023 and a look out notice issued in respect of the managing partner of the partnership firm.

2. The petitioner firm was engaged in the business of importing sports goods. On the allegation that the said imported goods were mis declared, the seizure memorandum dated 03.11.2021 was issued. Subsequently, show cause notice dated 30.10.2023 was issued by invoking sub-section 4 of Section 28 of the Customs Act, 1962 (the “*Customs Act*”) and other applicable provisions. The present writ petition was filed in the said facts and circumstances.

3. Learned senior counsel for the petitioner contends that the show cause notice was issued without jurisdiction. He submits that only the proper officer is conferred with the power to initiate proceedings under Section 28, whereas the show cause notice has been issued by a person other than the proper officer. He further submits that the relevant goods were imported in the year 2019 and, therefore, the show cause notice is



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beyond the period of limitation prescribed in sub-section 1 of Section 28 of the Act. He also submits that the partnership firm is currently unable to carry on business, including on account of the look out notice issued to the managing partner. In these circumstances, he submits that interference with the show cause notice and look out notice is warranted.

4. Mr. V. Sundareswaran, learned senior standing counsel, accepts notice for the first and third respondents. Mr. H. Siddarth, learned junior standing counsel, accepts notice for the second and fourth respondents.

5. Mr. V. Sundareswaran submits that the show cause notice was issued by the Commissioner of Customs, who is entitled to issue a show cause notice as per the provisions of the Customs Act, including Section 5 thereof. He further submits that the petitioner had earlier filed W.P.No.5191 of 2022 in respect of one of the bills of entry and that no orders were issued in favour of the petitioner in such writ petition.

6. Mr. H. Siddarth asserts that the proper officer issued the show



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cause notice and that reasons are set out for invoking the extended period of limitation under sub-section 4 of Section 28 of the Customs Act.

7. On examining the show cause notice, such show cause notice was issued under sub-section 4 of Section 28 r/w Section 124 and Section 110AA of the Customs Act. It also appears that such show cause notice sets out reasons for invoking sub-section 4, including suppression of facts and wilful misstatement. Sub-section 34 of Section 2 of the Customs Act defines “Proper Officer” widely as meaning an officer of customs who is assigned specific functions under the Customs Act. The petitioner is unable to establish that the Commissioner of Customs does not qualify as a proper officer for purposes of initiating proceedings under sub-section 4 of Section 28 of the Customs Act. The show cause notice was issued on 30.10.2023, which *prima facie* appears to be within the 5 year period of limitation under sub-section 4 of Section 28. A challenge to a show cause notice would ordinarily lie only if such show cause notice was issued without jurisdiction or if no case is made out even assuming that the allegations in the show cause notice are correct. This case does not fall within either of these categories. The petitioner has also not made out a



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case to interfere with such show cause notice for any other sufficient reason.

8. As regards the look out notice, such look out notice should be challenged in accordance with law by a person to whom such look out notice was issued. This writ petition has been filed by the partnership firm and not by the individual to whom the look out notice was issued. The seizure memorandum was issued on 03.11.2021 and the challenge thereto is liable to be rejected on the ground of laches. For all these reasons, the Writ Petition is not sustainable.

9. Therefore, W.P.No.17464 of 2024 is dismissed without any order as to costs. Consequently, the connected miscellaneous petitions are also closed.

03.07.2024

Index : No
Speaking Order : Yes
Neutral Case Citation:No
klt

To

1.The Principal Additional Director General,



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