(2015) 01 MAD CK 0079

In the Madras High Court

Case No : Writ Petition Nos. 29743 to 29745 of 2014

A.S. Constructions and Lighting Co. APPELLANT

Vs

The Additional Director of Revenue Intelligence RESPONDENT

Date of Decision : 06-01-2015

Acts Referred:
Customs Act, 1962 — Section 11(h), 110, 113, 113(d), 113(k)

Citation : (2015) 01 MAD CK 0079

Hon'ble Judges : T.S. Sivagnanam, J.

Bench : Single Bench

Advocate : R. Sankarasubbu for M. Seeni Sulthan, for the Appellant; K. Velayutham Pichaiya, Advocates for the Respondent

Judgement

T.S. Sivagnanam, J.—Since the issue involved in all these Writ Petitions arise out of a common show cause notice issued by the first respondent, they were heard together and are disposed of by this common order.

2. The petitioner in W.P. 29743 of 2014 is a Partnership Firm consisting of two partners who are the petitioners in W.P.Nos. 29744 and 29745 of 2014 and they are brothers. The Partnership Firm has filed the Writ Petition challenging paragraph No. 66 of the show cause notice dated 2.7.2014, issued by the first respondent calling upon the Firm and its partners to show cause as to why the seized 218.104 kgs. of Sandalwood logs valued at Rs. 19,72,517/- attempted to be exported vide shipping bill dated 31.12.2013, should not be confiscated under section 113(d) and 113(k) of the Customs Act, 1962 (the Act) and why penalty should not be imposed on them under sections 114 and 114AA of the Act.

2.1. The partners have filed the individual writ petitions in W.P.Nos. 29744 and 29745 of 2014 to quash paragraph No. 67 of the show cause notice dated 2.7.2014 whereby they were called upon to show cause as to why the seized 1786 Kgs of Sandalwood logs lying at their office premises and which were to be exported to China in the guise of handicrafts should not be confiscated under 113 (d) of the Act; why the seized 500 gm of red Sandalwoods should not be confiscated under section 113(d) of the Act and why penalty should not be imposed on them under section 114 of the Act.

2.2. The petitioners though received the show cause notice on 2.7.2014, did not submit their reply within the thirty days time granted, but filed the writ petitions during November 2014, seeking to quash paragraph Nos. 66 and 67 of the impugned show cause notice.

2.3. When the Writ Petition was heard on 14.11.2014, Mr.R.Sankarasubbu, learned counsel hearing for the petitioners submitted that the proposal to seize 218.104 kgs of Sandalwoods which were to be exported vide shipping bill dated 31.12.2013 is absolutely arbitrary and the proposal has been effected on the wrong opinion given by the Deputy Director (Handicrafts) and the petitioners were not given an opportunity to prefer an appeal against such opinion eventhough the circular dated 22.10.2010, provides for such a remedy. Further, it is stated that the quantity of 214.108 kgs of handicraft worked Sandalwood was made from the Sandalwood purchased from the Forest Department after complying with all formalities under the Forest Act and therefore, the respondents have no right to interfere in the petitioners'' property.

3. This Court was not convinced with the submissions made by the petitioner and made it clear that the impugned proceedings is only a show cause notice and it is well open to the petitioner to submit their reply and contest the matter on merits. Having made this clear this Court was inclined to consider the prayer made by the petitioner in W.P.Nos. 29744 and 29745 of 2014, wherein a prayer was made to quash paragraph No. 67 of the show cause notice proposing to seize 1686 kg. of Sandalwoods lying in the Office premises of the petitioners on the ground that they were to be exported to China in the guise of handicrafts.

4. The learned counsel submitted that admittedly the petitioner has not exported the said Sandalwood but the same were lying in the Office premises of the petitioners and the petitioners being absolute owners of the said property, purchased from the Forest Department after complying with all statutory formalities are free to deal with the product so purchased in the manner as desired by them and the respondent Department cannot put fetters on the petitioners right to deal with their property.

5. To consider the correctness of the submissions, made by the learned counsel for the petitioners this Court by order dated 14.11.2014, directed the learned Standing counsel appearing for the respondents to obtain instructions only with regard to the basis of the proposed seizure of the 1786 kgs of Sandalwood logs kept in the office premises of the petitioners on the reasonable belief that they are meant for illegal export. In response thereto, the learned Standing counsel for the Department has appeared and filed counter affidavit on behalf of the respondents 1 and 2.

6. Though there are other allegations against the petitioners and others alleging smuggling of gold concealed in a consignment of machines, in importing R 22

Gas, a prohibited item, by concealing the same in a declared cargo, etc., this Court is not concerned with those issues in these Writ Petitions, since the writ petitions are directed only against that portion of the show cause notice proposing to confiscate the Sandalwood logs.

7. Pursuant to a search of the residential and office premises of the petitioners during January 2014, it was found that 1786 kgs. of Sandalwood logs were stacked inside the room and on enquiry, petitioner Elangovan stated that they have purchased 2000 kgs of Sandalwood logs from the Forest Department and were planning to export the same to China, and have filed a shipping Bill to export 214 kgs., and the same was pending with the Customs.

8. The 214.108 kgs. of Sandalwood which were declared as Sandalwood (handicrafts show piece) was taken up examination and the Development Commissioner (Handicrafts) was requested to inspect the cargo and certify whether the goods are Sandalwood (handicrafts). A committee was constituted to examine the issue and by report dated 11.2.2014, it was certified that the products do not qualify as handicrafts products. The quantity of 1786 kgs. of Sandalwood logs which were kept in the Office premises of the petitioners were seized as they were meant for exports in the similar manner as that of 214.108 kgs., and the impugned show cause notice has been issued as to why they should not be confiscated.

9. The petitioners'' contention is that the proposal to confiscate 1786 kgs., of Sandalwood logs on the presumption that they are likely to be exported, is a total abuse of the powers and process of law and that the petitioners have not been given an opportunity to contest the report given by the Deputy Director of Handicrafts stating that the 214.108 kgs., are not handicraft items. The petitioners being lawful owners of the Sandalwood, having purchased the same from the Forest Department are entitled to deal with the same in the manner they desire and the proposal to confiscate the same is illegal.

10. The respondents 1 and 2 in their counter affidavit have submitted that in terms of section 110 of the Act, if the proper officer has reason to believe that any goods are liable for confiscation he may seize such goods and in terms of section 113(d) of the Act, any goods attempted to be exported or brought within the limits of any customs area for the purpose of being exported, contrary to any prohibition imposed by or under the Act, or any other law for the time being in force. It is further submitted that the export of Sandalwood is prohibited except for finished handicraft products or Sandalwood etc., under the trade policy formulated by the Central Government under the provisions of the Foreign Trade (Development and Regulation) Act 1992 and in the light of such prohibition, the goods are liable for confiscation under section 113(d) of the Act. Further the conduct of the petitioners in filing the shipping bill dated 30.12.2013, for export of Sandalwood logs by mis-declaring them as Sandalwood handicrafts, there is every justification for issuing the show cause notice proposing to confiscate the same. Further, the Sandalwood logs were seized from the premises of the

petitioners which is located within 50 kms., from the coastline of India and in terms of the Notification dated 7.1.1969 issued under section 11(h) of the Act, declaring as a specified area vulnerable for smuggling activities, the respondents are empowered to issue the show cause notice by invoking the provisions of the Act.

11. Heard Mr.R.Sankarasubbu learned counsel for the petitioners and Mr. Velayutham Pichaiya, learned Central Government Standing Counsel for respondents 1 and 2 and Mr.K.Mohana Mularli, learned Senior Central Government Standing Counsel for the third respondent.

12. As pointed out earlier, the challenge to paragraph 66 of the impugned show cause by the partnership Firm in 29743 of 2014 is thoroughly misconceived. The petitioners would contend that they had no opportunity to dispute the correctness of the report submitted by the Deputy Director, Office of the Development Commissioner (Handicrafts) dated 11.2.2014, certifying that the product does not qualify as handicraft product, is not a ground to interfere with the show cause notice. The petitioners do not dispute the jurisdiction of the respondents to issue the impugned show cause notice. Therefore, the proper procedure for the petitioners is to respond to the show cause notice and submit their reply raising all contentions. Therefore, on the grounds raise by the petitioners paragraph 66 of the impugned show cause notice cannot be quashed and accordingly W.P.No. 29743 of 2014 fails and the same is liable to be dismissed.

13. In W.P.Nos. 29744 and 29745 of 2014, filed by the partners of the writ petition in W.PNo. 29743 of 2014, is challenging paragraph 67 of the impugned show cause notice. In the said paragraph the respondent has called upon the petitioners to show cause as to why 1786 kgs., of Sandalwoods logs lying on the Office premises and which were to be exported to China in the guise of handicrafts should not be confiscated under section 113(d) of the Act.

14. The learned counsel for the petitioners argued that the Sandalwood logs were purchased through proper channel from the Forest Department after complying with all formalities. The said Sandalwood logs were not exported and the respondent has no jurisdiction to seize the logs which were lying in the Office premises of the petitioners.

15. It is not in dispute that the office premises falls within the 50 km., distance from the coast of India, which has been declared as an area vulnerable to smuggling, by Notification No. 17-Cus dated 7.1.1969, in exercise of the powers conferred by clause (c) of section 11-H of the Act. By virtue of the said provision, the Central Government has jurisdiction to specify an area as "specified area" for the purpose of the Act. Clause (a) of Section 11-H of the Act, defines ''illegal export'' to mean the export of goods in contravention of the provisions of the Act or any other law for the time being in force. Clause (c) section 11-H, defines "specified area" to include the Indian Customs Water and such inland area not

exceeding 100 km. in width in any coast or any border of area as the Central Government may, having regard to the vulnerability of that area to smuggling, by Notification in the official gazette, specify in this behalf. Proviso to clause (c) provides that where a part of any village, town or City, falls within the specified area, the whole of such village, town or City shall, notwithstanding that the whole of it is not within 100 kms., from any coast or other border of India, be deemed to be included in such specified area. Thus, the area where the petitioners'' office premises is situated, falls within the "specified area" which has been declared as an area vulnerable to smuggling in Tamil Nadu.

16. We have seen the definition of ''illegal export'' as defined under section 11-H(a) of the Act. Sandalwood has been listed as item No. 182 in schedule 2 of the Indian Trade Classification (Harmonious System) as item whose export in any form is prohibited excluding finished handicrafts products of Sandalwood, machine finished Sandalwood products and Sandalwood oil. Admittedly, the 1786 kgs., are in the form of Sandalwood logs and export of such logs is prohibited. The prohibition which is in the form of notification issued in exercise of the powers under the Foreign Trade Development and Regulation Act would fall within the umberage of section 113 of the Act. Clause (d) of section 113 of the Act covers any goods attempted to be exported contrary to any prohibition imposed by or under the Act or any other law. Therefore, the respondents 1 and 2 were vested with jurisdiction to issue the impugned show cause notice in so far as 1786 kgs. of Sandalwood logs lying in the petitioners'' office premises.

17. The petitioners would contend that the Department cannot put any fetters on the said quantify of Sandalwood logs as they are the absolute owners thereof and free to deal with the same in the manner they desire. It is pointed out by the respondents in the counter affidavit, that the averments made by the petitioners are mere farce and the filing of the writ petitions is vexatious with an intention to drag the matter. Further, it is submitted that till date the petitioners have not expressed any intention to deal with the Sandalwood logs in any other manner and therefore the show cause notice has been issued that the Sandalwood logs lying in the premises of the petitioners were attempted to be exported by mis-declaring the same as handicrafts and thereby liable for confiscation under section 113(d) of the Act.

18. From the materials placed on record it is seen that there was no such intention expressed by the petitioners to deal with 1786 kgs., of Sandalwood logs in the manner now sought to be projected, for the first time in this Writ Petition. Therefore, this Court is of the considered view that the impugned show cause notice cannot be quashed on the grounds raised by the writ petitioners. Consequently, W.P.Nos. 29744 and 29745 of 2014 are also liable to be dismissed.

19. In the result, for the reasons assigned, the Writ Petitions being devoid of merits, are dismissed. The petitioners are directed to submit their reply to the show cause notice within a period of thirty days from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are

closed.

