
(1999) 07 MAD CK 0081

In the Madras High Court

Case No : Writ Petition No's. 10062 and 10063 of 1999

Base Corporation Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 27-07-1999

Acts Referred:

Citation : (1999) 113 ELT 27

Hon'ble Judges : S. Jagadeesan, J

Bench : Single Bench

Advocate : Habibullah Basha, for R. Sudhakar, for the Appellant; S. Sethuraman, ACGSC, for the Respondent

Judgement

S. Jagadeesan, J.—Petitioners have filed these writ petitions for the issue of writ of mandamus forbearing the fourth respondent or other respondents from forcing the petitioners to pay duty on the goods imported at Chennai under transferable licence without the issue of a show cause notice.

2. Counter has been filed on behalf of the fourth respondent wherein at page number 8, it is clearly stated as follows :-

"The allegation made by the petitioner are false and baseless. The DRI has not made any demand of duty. The case is at investigation stage. After completion of the investigation and depending upon the outcome of the investigation, a proper show cause notice will be issued for demanding the duty."

3. The grievance of the petitioner is that without issue of any show cause notice, the petitioners are being forced to pay duty.

4. From the above statement made in the counter affidavit filed on behalf of the fourth respondent, it is clear that the authorities are not making any demand for the payment of duty. The statement is recorded and it is further directed that the respondents are not to make any demand till the investigation is over.

5. Learned Senior Counsel for the petitioners further contended that all the

particulars have been furnished to the respondents and in spite of it, the respondents are dragging on the proceedings under the guise of investigation. Notices issued to the petitioners by the respondents do not specify as to what documents they are required to produce. Without giving any description of documents, the notices are being issued calling upon the petitioners to produce the documents described in the said notices.

6. Hence, the conduct of the respondents in issuing such notices and prolonging the investigation is nothing but to harass the petitioners and hence, suitable direction may be issued to the authorities. Moreover, the respondents having an investigation unit at Madras, instead of calling upon the petitioners to come to Delhi on every occasion, may consider the entrustment of the matter to the investigation unit at Madras so that the investigation can be over earlier.

7. It is contended by the learned Counsel for the respondent that even though notices were issued to the petitioners to appear on several occasions, the petitioners appeared only on three occasions and on other occasions, they had sent telegrams on the health ground or on some other personal grounds and sought for the postponement [of] the enquiry in respect of investigation. Hence, it is not the Department who alone is delaying the investigation and the delay is mainly due to the conduct of the petitioner also.

8. I carefully considered the contentions of both the Counsel. Without going into the merits and demerits of the contentions of both the Counsel, I direct the fourth respondent to issue notice to the petitioners calling upon them to produce what are all documents they require for completion of the investigation. If the petitioner is in possession of such documents, he has to produce the same on the given date. On the other hand, if the petitioner is not in possession of the same, he has to send a reply to the respondents. After this procedure, the fourth respondent may hold an enquiry if it is necessitated. In case if an enquiry is to be held and it is not convenient for the petitioner on any date the fourth respondent can depute the Madras unit to complete the investigation against the petitioners and after receipt of the report from the said unit, the fourth respondent can proceed further. Till such investigation is over, it is made clear that either the fourth respondent or any other respondents should not harass the petitioner either for payment of duty or for the production of documents, since it is always open for the fourth respondent to draw an adverse inference for non-production of documents by the petitioner in spite of the fact that he is in possession of the same. Hence, the respondents are strictly directed to follow the above procedure. The writ petition is disposed of with the above directions. No costs. W.M.P. Nos. 14316 to 14318 of 1999 are closed.