

(2014) 04 KL CK 0015

In the High Court Of Kerala

Case No : Writ Appeal No. 311 and 313 of 2014 in W.P. (C) No. 27431 of 2013

Commissioner of Customs

APPELLANT

Vs

Ruby Cargo

RESPONDENT

Date of Decision : 01-04-2014

Acts Referred:

Customs Act, 1962 — Section 28(4)(b)

Citation : (2014) 306 ELT 472

Hon'ble Judges : M.L. Joseph Francis, J;K.T. Sankaran, J

Bench : Division Bench

Advocate : Thomas Mathew Nellimoottil, SC, Advocate for the Appellant; V.J. Mathew, SR and P.G. Jayashankar, Advocate for the Respondent

Judgement

K.T. Sankaran, J.—These Writ Appeals arise out of interim orders passed by the learned Single Judge in W.P. (C) No. 27431 of 2013 and W.P. (C) No. 30237 of 2013 respectively. In the interim order in W.P. (C) No. 27431 of 2013, further proceedings pursuant to Ext.P9 show cause notice were stayed until further orders. There was also a direction with regard to the suspension of the petitioner's registration under the Courier Imports and Exports (Clearance) Regulations, 1998. In the interim order in W.P. (C) No. 30237 of 2013, further proceedings pursuant to Ext.P7 show cause notice were stayed. The learned counsel appearing for the appellants submitted that the show cause notices were issued under Section 28(4)(b) and (c) of the Customs Act, 1962. The learned counsel submitted that normally, a show cause notice shall not be interfered with in writ proceedings, unless the show cause notice itself is without jurisdiction. The learned counsel submitted that in the present case, the show cause notices contain all the relevant details so that the parties concerned will get a meaningful opportunity to reply to the specific allegations made in the show cause notices.

2. The learned counsel appearing for the writ petitioners submitted, relying on the decision of the Supreme Court in ORYX Fisheries Private Limited Vs. Union of India (UOI) and Others, that if the show cause notice contains definite

conclusions on the points involved, the entire proceedings initiated as per the show cause notice would get vitiated on the ground of unfairness and bias. In the case in *Oryx Fisheries Private Limited v. Union of India* (supra), based on the show cause notice, an enquiry was conducted and Final Order was passed. That final order was challenged in appeal before the Appellate Authority. Challenging the order of the Appellate Authority, a Writ Petition was filed and thereafter, the matter was taken to the Supreme Court.

3. The learned counsel appearing for the appellants submitted that in the present case, such a situation has not arisen and that all the proceedings pursuant to the show cause notices have been stayed by the learned Single Judge. In *Siemens Ltd. Vs. State of Maharashtra and Others*, , the Supreme Court held that ordinarily, a writ court may not exercise its discretionary jurisdiction in entertaining a Writ Petition questioning a notice to show cause unless it appears to have been without jurisdiction. It was also held that when the notice is issued with premeditation, a Writ Petition would be maintainable.

4. The learned counsel appearing for the appellants submitted that in the case on hand, the writ petitioners have statutory remedies available and therefore, they are not justified in approaching this Court challenging the show cause notices.

5. The contentions put forward by the parties as mentioned above, are primarily to be considered by the learned Single Judge. It is not fair or proper to arrive at a conclusion on those submissions in the Writ Appeals challenging the interim orders passed by the court. Then the question which would arise is whether there was justification for issuing an interim order staying the proceedings completely.

6. We are of the view that the stay can be confined to the actual passing of final orders pursuant to the show cause notices impugned in the Writ Petitions. If so, no serious prejudice would be caused to any of the parties. In these circumstances, we dispose of the Writ Appeals as follows:

(1) The interim stay granted by the learned Single Judge is modified and the stay is confined to actual passing of final orders on the basis of the show cause notices. It is made clear that the proceedings pursuant to the show cause notices may go on, but the stay is confined to actual passing of final orders.

(2) This modified interim stay order will remain in force for a period of four months. Meanwhile, both parties will be entitled to move the learned Single Judge for urgent hearing of the Writ Petitions.