(2010) 03 MAD CK 0162

In the Madras High Court

Case No : W.A. (MD) No''s. 62-65 of 2070 and M.P. (MD) No''s. 2-2 of 2010 in Writ Petition No''s. 189-192 of 2005

Crystal Traders APPELLANT

Vs

Commissioner of Customs RESPONDENT

Date of Decision : 17-03-2010

Acts Referred:
Customs Act, 1962 — Section 111, 28(1)

Citation : (2010) 253 ELT 406

Hon'ble Judges : K.B.K. Vasuki, J;F.M. Ibrahim Kalifulla, J

Bench : Division Bench

Advocate : Muthu Venkataraman, for P.T.S. Narendra Vasan, for the Appellant; B. Vijay Karthikeyan, for the Respondent

Final Decision : Dismissed

Judgement

F.M. Ibrahim Kalifulla, J.—Though the Miscellaneous Petitions for stay was posted for hearing, the grounds to be considered for disposal of the stay petitions, as well as the writ appeals are going to be the same, we dispose of the writ appeals themselves with the consent of the parties.

2. In all the writ petitions, the challenge was to the show cause notice issued by the respondents. Under the show cause notice, it was alleged that there were serious fraud played in respect of DEPB licences issued by the DGFT, based on which the appellants had the benefit of concessional duty. The appellants were called upon to show cause as to why the licence themselves should not be cancelled and consequently the goods imported and cleared by them duty free by using fake and forged DEPB licences and TRAs should not be treated as liable for confiscation under Sections 111(m) read with 111(o) of the Customs Act, 1962 as well as the demand foe the duty which was foregone under the proviso to Section 28(1) of the Customs Act, 1962 apart from the levy of interest and penalty.

3. The writ petitions were disposed of by the learned Judge by the order impugned in these writ appeals. The learned Judge by relying upon the decision of this Court reported in 2008 (227) E.L.T. 355 (Mad.) (Madura Coats Limited v. Commissioner of C.Ex., Madurai) took the view that the report cannot be accepted on the basis of an affidavit and counter affidavit to resolve the disputed questions of fact. The learned Judge therefore dismissed the writ petitions and directed the appellants to furnish their explanation within four weeks to the impugned show cause notice. The respondents were also directed to proceed in accordance with law and pass appropriate orders. Liberty was also given to the appellants to raise the plea of limitation and it is for the respondents to deal with all the points in accordance with law.

4. Though the learned Counsel for the appellants seeks to place reliance upon various Division Bench decisions as well as a decision of the Hon''ble Supreme Court to contend that show cause notice could not have been maintained and the same can be set at naught in this writ proceedings, we are not inclined to accept the said submission so made on behalf of the appellants. We find that in the Division Bench decisions reported in Commissioner, Customs Vs. Leader Valves, Ltd., and Commr. of Customs (Preventive) Vs. Aafloat Textiles (I) Pvt. Ltd. and Others, the proceedings had emanated after orders were passed by the adjudicating authorities and the respective Appellate Tribunal. It is while considering the orders of the Tribunal as well as that of the High Court, the respective Division Bench as well, as the Hon''ble Supreme Court passed orders in those decisions.

5. In such circumstances, when the petitioners straightaway approached this Court seeking to challenge the show cause notice itself, the learned single Judge has rightly held that this Court cannot be expected to ''determine such serious disputable questions of fact merely based on the averments contained in the affidavits and counter affidavits.

6. We therefore find no flaw in the conclusion of the learned Judge in dismissing the writ petitions and directing the appellants to file its explanation within four weeks. The writ appeals cannot therefore be entertained. The writ appeals are dismissed directing the appellants to file their explanation as directed by the learned single Judge within four weeks from the date of receipt of a copy of this order. We make it clear that directions of the learned single Judge will continue to operate. Connected Miscellaneous Petitions are closed.

