
(1996) 09 MAD CK 0110

In the Madras High Court

Case No : Writ Petition No. 3910/95 and Writ. Miscellaneous P. No. 6404 of 1995

Jesudasons Private Ltd.

APPELLANT

Vs

Assistant Collr. of Cus. and C. Ex., Ramnad

RESPONDENT

Date of Decision : 03-09-1996

Acts Referred:

Customs Act, 1962 — Section 110

Citation : (1996) 88 ELT 340

Hon'ble Judges : Shivraj V. Patil, J

Bench : Single Bench

Advocate : Shri B. Kumar, for the Appellant; Shri K. Jayachandran, Addl. Central Govt. Standing Counsel, for the Respondent

Judgement

Shivraj V. Patil, J.

1. Although W.M.P. No.6404 of 1995 is listed for orders, the writ petition itself is taken up for final disposal with the consent of the learned counsel appearing for the parties, showing regard to the nature of the relief sought for in the writ petition. Heard the learned counsel for the parties on record. The petitioner in this writ petition has sought for a writ of Mandamus, directing the respondents to hand over the possession of the Ship [M. T. STEREGUSHDITY (sic)] to the petitioner, since no show cause notice has been issued within a period of six months in accordance with the Legislative command contained in Section 110 of the Customs Act. The learned counsel for the petitioner contended that the respondents having not issued any notice within a period of six months to the petitioner, as contemplated and required u/s 110 of the Customs Act, the petitioner is entitled for the relief. He drew my attention to the averment made in Para 4 of the affidavit filed in support of the writ petition, and also to Para 8 of the Counter affidavit filed by the respondents. The learned Counsel made few more submissions on the merits of the contentions raised in the writ petition. I do not think it necessary to refer to them in the view I am proposing to take.

2. The learned counsel for the respondents submitted that the notices as

required u/s 110 of the Act were issued to all the directors of the petitioner's company including the officers concerned. He also placed before me the copies of the acknowledgments received by the directors to whom the notices were addressed in their names. He drew my attention to the acknowledgement given by T. R. Kannan, Son of Ramasamy Naicker which shows that the notice was received by him in his individual capacity as well as the Managing Director of the petitioner's company. The learned counsel submitted that the said notices were issued within a period of six months as required u/s 110 of the Act. On the basis of the acknowledgements, he submitted that the contention of the learned counsel for the petitioner, that no notice was given to the petitioner cannot be accepted. The learned counsel for the petitioner reiterated submitted that the notices even if they were issued to the individual directors, they cannot satisfy the requirements of Section 110 of the Act, inasmuch as they are not the notices addressed to the petitioner's Company itself. Such notices served on individuals cannot be said to be notices properly addressed and served to the petitioner's Company.

3. I have considered the submissions made by the learned counsel for the parties. Having regard to what is stated above, it cannot be said that this is a case where no notice at all was issued to the petitioner as required u/s 110 of the Act. Whether the notices issued to the individual Directors, officers and to the Managing Director in his individual capacity as well as the Managing Director of the Company can be said to be proper and sufficient u/s 110 of the Act is a matter that has to be examined by the adjudicating authorities in the first place, in view of the rival contentions. The learned counsel for the respondents submitted, when asked, why the proceedings are pending for more than two years, that the respondents have already issued show cause notice to the petitioner's Company, and it is the petitioner which has to give reply in order to proceed to adjudicate the dispute or complete the adjudication proceedings. Under the circumstances, I am of the view that the petitioner should file reply to the show cause notice taking all the contentions that are available to it including the contentions raised in the writ petition within a given time. In the even of the petitioner filing such reply, the respondents should also complete the adjudication proceedings within a given time frame having regard to the fact that the matter is pending for more than two years. The learned counsel for the petitioner, at this stage urged that the respondents, should, in the first place, decide the question whether the notice u/s 110 of the Act was issued to the petitioner within the given time in accordance with law at all, and thereafter depending on the order on the issue can proceed further in accordance with law.

4. Having regard to all aspects of the matter, I think it is just and appropriate to dispose of the writ petition by passing the following order :- (1) The petitioner should file reply to the show cause notice already issued to the directors within a period of two weeks without prejudice to the rights and contentions on the question of proper service of notice; (2) In the event the petitioner filed reply to the show cause notice as aforementioned with in the time fixed, the respondents

shall proceed to pass orders, in the first place, on the question whether the notice as required u/s 110 of the Act was issued to the petitioner and depending on the order on that question, shall proceed further in accordance with law, within four weeks. All the contentions of the parties are left open. The writ Petition is disposed of accordingly. In view of the disposal of the writ petition, no order are necessary in W.M.P. No.6404 of 1995. Hence it is dismissed.