(2020) 08 DEL CK 0201

In the Delhi High Court

Case No : Civil Writ Petition No. 5551 Of 2020

Kpmg Assurance And Consulting Services LLP (Formerly Known As M/S KPMG) APPELLANT

Vs

Union Of India & Ors RESPONDENT

Date of Decision : 28-08-2020

Acts Referred:
Constitution Of India, 1950 — Article 226
Customs Act, 1962 — Section 28(4), 111(d), 111(o)

Citation : (2020) 08 DEL CK 0201

Hon'ble Judges : Dhirubhai Naranbhai Patel, CJ;Prateek Jalan, J

Bench : Division Bench

Advocate : Kanupriya Bhargava, Divya Bhardwaj, Ripu Dhawan Bhardwaj, Aakanksha Kaul, Manek Singh

Final Decision : Dismissed

Judgement

D.N. Patel, CJ

Proceedings in the matter have been conducted through video conferencing.

C.Ms.No.20018-19/2020 (exemptions)

Allowed, subject to all just exceptions.

The applications are disposed of.

C.M.No.20020/2020 (exemptions)

For the reasons stated in the application and in view of the present prevailing situation, the present application is allowed. However, the applicant is directed to file duly signed and affirmed affidavits within a period of one week and the requisite Court fee within a period of 72 hours from the date of resumption of regular functioning of the Court.

The application is disposed of.

W.P.(C) No.5551/2020

1. This writ petition has been preferred with the following prayers:-

"a.To issue a Writ of Prohibition, or any other appropriate Writ, directing the Respondent No. 2 to 7, and prohibit them to take any action against the Impugned Notice.

b. To issue a writ of Certiorari, or any other appropriate Writ, calling for the records and quashing the Impugned Notice issued by Respondent No. 2 to 7 as being conclusive and contrary to the provisions of Section 28(4) read with Section 111(d) and 111(o) of the Customs Act; and

c. Pass such other consequential orders or grant such other consequential relief, as this Hon'ble Court may deem fit and proper in the facts and circumstances of this case."

2. Looking to the facts and circumstances of the case, it appears that the Customs authorities issued show cause notice dated 26th June, 2020 (Annexure P-1 to the memo of this writ petition), which is under challenge. The respondents have invited reply of the petitioner to the said show cause notice, as stated in para-10 therein.

3. Much has been argued by the learned counsel for the petitioner about the lack of jurisdiction on the part of the respondents. We are not in agreement with this contention, as the respondents have the power, jurisdiction and authority to issue the aforesaid show cause notice for the alleged breach of Foreign Trade Policy and wrongly availing the benefits under 'Served from India Scheme' (SFIS). The objections articulated by learned counsel for the petitioner are of a nature which can be taken before the authorities, and do not call for a departure from the general principle that a writ petition will not be entertained against issuance of a show cause notice.

4. Learned counsel appearing for the petitioner has also argued on merits that there is no violation of the Foreign Trade Policy nor there is a misuse of SFIS scheme or of SFIS credits. The licenses were issued by DGFT which are valid even today, as submitted by the counsel for the petitioner.

5. As the show cause notice is yet to be decided or adjudicated upon by the concerned respondents authorities, we are not expressing any opinion on the merits of the case. The petitioner has to give reply of the show cause notice to the concerned respondent authorities and if the respondents decide any issue against the petitioner, the petitioner is not remediless.

6. Suffice it is to say that this is a premature writ petition. The Supreme Court in the case of Commissioner of Central Excise, Haldia Vs. Krishna Wax (P) Ltd., Civil Appeal No.8609/2019 decided on 14th November, 2019 has held as under:-

"12. It has been laid down by this Court that the excise law is a complete code in itself and it would normally not be appropriate for a Writ Court to entertain a petition under Article 226 of the Constitution and that the concerned person must first raise all the objections before the authority who had issued a show cause notice and the redressal in terms of the existing provisions of the law could be taken resort to if an adverse order was passed against such person. For example in Union of India and Anr. v. Guwahati Carbon Limited MANU/SC/1256/2012 : (2012) 11 SCC 651, it was concluded; "The Excise Law is a complete code in order to seek redress in excise matters and hence may not be appropriate for the writ court to entertain a petition Under Article 226 of the Constitution", while in Malladi Drugs and Pharma Ltd. v. Union of India MANU/SC/0407/2004 : 2004 (166) ELT 153 (S.C.), it was observed:

"...The High Court, has, by the impugned judgment held that the Appellant should first raise all the objections before the Authority who have issued the show cause notice and in case any adverse order is passed against the Appellant, then liberty has been granted to approach the High Court...

...in our view, the High Court was absolutely right in dismissing the writ petition against a mere show cause notice."

13. It is thus well settled that writ petition should normally not be entertained against mere issuance of show cause notice. In the present case no show cause notice was even issued when the High Court had initially entertained the petition and directed the Department to prima facie consider whether there was material to proceed with the matter."

(emphasis supplied)

7. In view of the above, without entering into the merits of this case, as this is a premature writ petition, we are not inclined to give any relief to the petitioner. The petitioner may file a reply of the show cause notice and the concerned respondents authorities shall adjudicate upon the same in accordance with law, rules, regulations and government policies applicable to the facts of the case and after giving adequate opportunity of being heard to the petitioner.

8. With these observations, this writ petition is dismissed.

C.M.No.20017/2020(stay)

In view of the final order passed in the writ petition, this application stands disposed of.

