(2017) 01 MAD CK 0285

In the Madras High Court

Case No : 11385 of 2001

M/S.Y.J.ENTERPRISES — APPELLANT

Vs

THE COMMISSIONER OF CUSTOMS & ORS. — RESPONDENT

Date of Decision : 11-01-2017

Acts Referred:

Customs Act, 1962, Section 110, Section 122, Section 124, Section 130E - Seizure of goods, documents and things - Adjudication of confiscations and p

Citation : (2017) 01 MAD CK 0285

Hon'ble Judges : P.N.Prakash

Bench : SINGLE BENCH

Advocate : P.N.Prakash

Judgement

1. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondents.

2. In this writ petition, the petitioner who is an exporter, is challenging the show cause notice dated 17.03.2001 issued by the Deputy Commissioner of Customs (2nd respondent) under Section 124 of the Customs Act, 1962.

3. The case of the department has been set out in the preamble portion of the show cause notice dated 17.03.2001 and it may be necessary to extract the same verbatim below, for proper appreciation of the dispute at hand. "M/s Y.J.Enterprises, No.79, Velacherry Main Road, Pallikarani, Chennai, filed a Shipping Bill No.2227562 dt. 03.06.2000 for export of 90 pcs Wooden Chair legs made of Padak wook to M/s Shersun Trading Co. Ltd., 1333, Hagyu, ITDE-Machi, Yamagata, Japan vlued at Rs.1,33,500 (FOB). At the time of examination, the Appraising Officer (Exports) insisted upon W.L.O examination certificate to verify the nature of wood as per EXIM policy and CITES.

2. W.L.O officers after a preliminary investigation, issued a letter dt. 18.07.2000 to customs to detain the consignment pending further investigation. The Deputy

Director, W.L.O. Drew a sample on 24.07.2000 from the consignment for further verification.

3. Thereupon, the Regional Dy. Director (WLP), Southern Region, Chennai, in his letter to the Customs, dt. 16.08.2000, stated that the samples drawn were tested by the Scientists of Institute of Wood Science & Technology (Indian Council of forestry Research & Education) Bangalore and that tests revealed beyond doubt the items attempted to be exported were ''Musical Instruments Parts made out of Red Sanders Wood'' (Pterocarpus Santalinus). He has recommended for confiscation of the goods as Red Sanders was listed in Appendix -2 of schedule -2 of EXIM policy and Appendix II of CITES as a restricted item of export.

4. The case was referred to the SIIB for further investigation. The goods were examined in the presence of exporter, Mr.S.Jose, CHA''S representative and two independent witnesses on 26.09.2000 and it was seized under duly drawn Mahazar, under Section 110 of the Customs Act, 1962.

5. On verification of data related to exports, it was found that there were nine previous consignments with description of ''Wooden Chair legs made of Padk Wood'' exported through Air Cargo Complex, Chennai to Japan by M/s Y.J.Enterprises with declared FOB value of Rs.18,74,740/0 (details given in Annexure II)".

4. After further investigation by the Customs Authorities, the aforesaid show cause notice has been issued, calling upon the petitioner to show cause before the Commissioner of Customs Airport, (Chennai), within 30 days from the date of the notice as to why: (i) the goods covered by the Shipping Bill No.2227562 dated 03.06.2000, at an estimated value of Rs.1.35 crores shall not be confiscated under Sections 113(d) and 113 (i) of the Customs Act, 1962 read in conjunction with the Section 3(2) of the Foreign Trade (Development & Regulation) Act, 1992.

(ii) Penalty shall not be imposed on M/s Y.J.Enterprises for attempting to export improperly under Sec.114 of the Customs Act, 1962, the consignment covered by Shipping Bill No.2227562 dated 03.06.2000.

(iii) Penalty should not be imposed on M/s Y.J.Enterprises for improper exportation through violation of Exim Policy for the previous export consignments of "wooden leg charis made of Padak wood", worth an FOB value of Rs.18,74,740/- (as given in annexure II) under Section 114 of the Customs Act, 1962".

5. Mr.Raveekumar, learned counsel appearing for the petitioner relying upon an unreported decision of a learned Single Judge of this Court dated 27.10.2015 passed in W.P.No.3374 of 2015 etc. batch of cases (M/s Masterstroke Freight Forwarders Pvt. Limited represented by its Managing Director D.Sukumaran, Chennai 1 vs. The Commissioner of Customs (Imports) Chennai and another

etc.) submitted that challenge to the show cause notice is not a bar, but must satisfy the following tests: (i) Where the notice is issued without authority/ jurisdiction,

(ii) Where the notice is issued beyond the period prescribed by law,

(iii) Where the notice is issued with a prejudiced mind,

(iv) Where the issuance of the notice is itself an abuse of process of law".

6. This Court has no quarrel with the aforesaid proposition of law. This Court has to test the legality of the show cause notice on the anvil of the aforesaid position of law.

7. Mr.Raveekumar, learned counsel for the petitioner submitted that the Deputy Commissioner has no authority to issue the show cause notice, since the value of the goods in dispute exceeded Rs.1.5 lakhs and therefore, it is only the Commissioner of Customs, who can deal with the matter in terms of Section 122 of the Customs Act.

8. The answer to the above submission lies in the show cause notice itself. It is clearly stated in the show cause notice that the same has been issued with the approval of the Commissioner of Customs and the petitioner has been asked to appear before the Commissioner of Customs and show cause as to why the goods should not be confiscated. Mr.Raveekumar, learned counsel for the petitioner was not able to show any provision of law in the Customs Act to the effect that even a show cause notice has to be issued only by the adjudicating authority and not by any other authority. After all, the show cause notice is the result of the investigation conducted by the Investigating Wing of the Customs and after collecting the materials, they would place it before the adjudicating authority, who in turn, would pass orders after hearing the parties and not otherwise. Therefore, I am unable to persuade myself to agree with the submission of Mr.Raveekumar. 8.1 Mr.Raveekumar, learned counsel for the petitioner further contended that the show cause notice has been issued beyond the period of limitation, for which, he relied upon Section 110(2) of the Customs Act, which says that show cause notice under Section 124(a) of the Act should be given within six months of the seizure of the goods. According to Mr.Raveekumar, the goods in this case were seized as early as 03.07.2000, the date on which the Bill of Entry was filed by the party and that show cause notice was issued only on 17.03.2001, which is beyond the period of limitation. In this case, the seizure of the goods was not effected by the Customs Authorities on 03.07.2000. The petitioner had submitted the shipping Bill and the goods for inspection by the Customs Appraiser on 03.07.2000. The authorities did not accept his documents, but, had insisted upon him to produce a certificate from the Wild Life Officer as they felt that the goods in question may be prohibited goods. Therefore, they have kept the whole issue pending for the petitioner to produce the necessary certificate from the Wild Life Authorities. When the petitioner did not produce the necessary certificate, the Wild Life Authorities came to the place and inspected

the consignment by drawing samples on 24.07.2000. Thereafter, the Wild Life Authorities had given a certificate to the effect that goods transported were musical instruments Parts made out of Red Sanders Wood, the export of which has been banned. Only thereafter, the Customs Authorities effected seizure of the goods on 26.09.2000 in the presence of independent witnesses and Panchanama. The show cause notice has been issued on 17.03.2001, which is well within six months from the date of seizure viz., 26.09.2000.

8.2 Mr.Raveekumar, learned counsel for the petitioner further contended that the very act of detention of the goods by the authorities would by itself mean to imply seizure of the goods and therefore, the formal seizure on 26.09.2000 cannot be reckoned for computing the period of limitation.

8.3 The above argument lacks substance because when the petitioner presented the goods with the documents, at that time itself, the Customs Authorities informed the petitioner that goods will not be accepted, unless he produces the certificate from the Wild Life Authorities. The petitioner could have easily taken back the goods and gone, but he did not do so.

9. Further, under Section 110 of the Customs Act, the Customs Officer, can seize an article only when he has reason to believe that it is liable to confiscation. The expression reason to believe has been defined in the Indian Penal Code as follows:- "A person is said have "reason to believe"a thing, if he has sufficient cause to believe that thing but not otherwise".

The expression "reason to believe" is distinct from "reasonable belief" and ''suspicion''. In this case, only after obtaining a certificate from the Wild Life Authorities that the goods in question is made of Red Sanders, the Seizure Officer of the Customs Department had the reason to believe that it is liable for confiscation. Therefore, the act of the Customs Officers in waiting for opinion from the Wild Life Authorities before taking action under Section 110 of the Act cannot be said to be illegal. The Customs Officers cannot also act in haste and spoil the export possibilities of an Exporter by indiscriminately seizing the goods, based on mere suspicion and surmise.

10. Mr.Raveekumar, learned counsel for the petitioner submitted that the Customs Officer does not have the authority to conduct seizure nor issue a show cause notice. In support of his contention, he placed strong reliance on the Judgement of the Hon''ble Supreme Court in the case of Commissioner of Customs vs. Sayed Ali and Another, reported in (2011) 3 Supreme Court Cases 537

11. This Court is of the opinion that the Judgment cited has no relevance to the facts of the case, because the said Judgment was rendered in a regular appeal under Section 130-E of the Customs Act, 1962, against an order passed by the Customs, Excise and Gold (Control) Appellate Tribunal (in short "CEGAT"). Here we are dealing with only the show cause notice issued by the Deputy Commissioner and not the final orders passed by the CEGAT.

12. At the risk of repetition, the case at hand was investigated by the Customs Authorities themselves and not by an officer of the DRI. The power of the Customs Authorities to issue show cause notice and proceed with the adjudication process is beyond any cavil.

13. In the result, this writ petition is devoid of merits and accordingly the same is dismissed. No costs.

