

(2015) 10 BOM CK 0173
In the Bombay High Court
Case No : Writ Petition No. 1121 of 2015

Prince International

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 12-10-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 325 ELT 495

Hon'ble Judges : S.C. Dharmadhikari and B.P. Colabawalla, JJ.

Bench : Division Bench

Advocate : Arun Mehta i/b. Akshar Laws, for the Appellant; Pradeep S. Jetly, for the Respondent

Judgement

1. The Petitioner by this Writ Petition under Article 226 of the Constitution of India seeks the following reliefs:-

"(a) that this Hon''ble Court will be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction calling for the records and papers pertaining to the Notice of Demand dated 7-10-2013 (Exhibit "A" hereto) and impugned attachment orders dated 27-12-2014 and 29-12-2014 (Exhibit "B" and "C" hereto) and impugned ex parte Order-in-Original dated 23-4-2010 (Exhibit "D" hereto) and after going into the legality and propriety thereof be pleased to quash and set aside the same.

(b) that this Hon''ble Court will therefore be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction calling for the records and papers pertaining to Notice of Demand dated 7-10-2013 (Exhibit "A" hereto) and impugned attachment orders dated 27-12-2014 and 29-12-2014 (Exhibit "B" and "C" hereto) and impugned ex parte Order-in-Original dated 23-4-2010 (Exhibit "D" hereto) and after going into the legality and propriety thereof be pleased to quash and set aside the same."

The only contention raised before us by Mr. Mehta appearing for the petitioners is

that the petitioners are supposed to have been served with a show cause notice and thereafter an order-in-original in respect of the claim of drawback. This drawback amount is in respect of the export made under the shipping bills mentioned in the Annexure attached to the show cause notice. The allegation is that this has been wrongly availed of and therefore should be returned along with the requisite interest.

2. Mr. Mehta submits that there has been no record of any proceedings and the adjudication order itself which is reported to be enforced by the demand notices. The competent authority, namely, the Deputy Commissioner records that a copy of the show cause notice was sent at the address mentioned in the record, namely, on the petitioner Prince International, which is a partnership firm. It is not stated that the same has been served but it was left at the firm's office. This can never be a good service much less proof of the petitioners being served with the proceedings. It is such an adjudication order dated 23rd April, 2010 and passed ex parte which was sought to be enforced by the subject demand notice that the petitioners came to know of it being delivered. The petitioner immediately applied for information under the Right to Information Act, 2005 and was provided with this piece of information and a copy of the order.

3. The petitioner submits that such an order cannot be enforced. It is evident from the proceedings that an adjudication has been made in the absence of the petitioners and an order passed in such an adjudication is being enforced by coercive means.

4. When the attention of Mr. Jetly was invited to the above endorsement in the adjudication order, Mr. Jetly submits that belatedly and with a view to avoid all consequences in law, such a plea has been raised.

5. We have found from a reading of the order of adjudication dated 23rd April, 2010, copy of which is at pages 26 and 27 of the paper book that the show cause notice was sent on the address mentioned and the envelope was left by the postal authority at the said place. We do not see how such an act on the part of the postal authority enabled the Deputy Commissioner of Customs to record a satisfaction that the petitioners are duly served.

6. On this short ground alone, since the adjudication order violates the principles of natural justice for want of notice and hearing that it is set aside. The petitioner shall be now served with a copy of the show cause notice and related documents so also its Annexures within a period of two weeks from today. The petitioners, on service of such show cause notice shall appear for adjudication before the competent authority within a period of four weeks from today. The competent authority shall endeavor and dispose of the proceedings within a period of eight weeks from the date of the petitioners' appearance. All contentions are kept open. For a period of 12 weeks from today, all coercive proceedings shall remain in abeyance. We clarify that we have not expressed any opinion on the rival contentions and merits of the show cause notice and the allegations therein.