
(2011) 08 MAD CK 0290

In the Madras High Court

Case No : Writ Petition No. 18060 of 2011 and MP No's. 1 to 4 of 2011

Shree Ganesh Steel Rolling Mills Limited

APPELLANT

Vs

The Commissioner of Customs

RESPONDENT

Date of Decision : 02-08-2011

Acts Referred:

Customs Act, 1962 — Section 112, 17, 2(34), 28

Citation : (2011) 187 ECR 421 : (2012) 282 ELT 219

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : R. Yashod Vardan and B. Satish Sundar, for the Appellant; K. Ravi Anantha Padmanaban, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—Heard Mr. R.Yashod Varadan, learned Senior Counsel, leading Mr. B.Sathish Sundar, learned Counsel appearing for the Petitioner and M/S.K.Ravi Anantha Padmanaban, learned Standing Counsel for the Customs Department / Respondent.

2. The writ Petitioner challenges the show cause notice, dated 31.03.2005. By the show cause notice the Additional Director General, Customs, asked the Petitioner as to why action should not be taken against them under the Customs Act, 1962. The show cause notice also indicated that they should file a reply along with necessary documentary evidence and if No. reply is given the matter will be adjudicated and they were also requested to state whether they wish to be heard in person. It is also stated that they were asked to show why penalty should not be imposed on them u/s 112(a) of the Customs Act, 1962.

3. The Petitioner filed before this Court four writ petitions, being W.P. Nos. 5700 to 5703 of 2005. In those writ petitions, the Petitioner sought permission for drawing samples and for securing test report for the goods under detention and also to release the goods pertaining to the Bills of Entries. The writ petitions were

disposed of by a common order, dated 11.04.2005. While disposing of the said writ petitions, this Court observed that after the show cause notice, they have also sent a reply and they are entitled to point out the deficiencies in the report of the National Metallurgical Laboratory (NML) and if they are really aggrieved by the assessment, they can always challenge the same and there is No. necessary to release the goods pending provisional assessment. As against the same, writ appeals in W.A. Nos. 832 to 835 of 2005 were filed before this Court and the same were disposed of by a common judgment, dated 22.07.2005. The said Writ Appeals judgment is since reported in 2006 (206) E.L.T. 76 (Mad.). In the said writ appeals, this Court has held that challenge to the show cause notice was premature and they should face adjudication. It was thereafter they filed Miscellaneous Petition Nos. 1822 to 1825 of 2006 seeking for recall of the order passed by this Court in terms of the observations made by the Supreme Court. The Subsequent Division Bench by an order dated 01.12.2006 disposed of those Miscellaneous Petitions and recalled the earlier order, both the writ petitions and writ appeals and the Petitioner was directed to make submissions before the authorities concerned after getting samples from the detained goods and re-test the same in accordance with the notification dated 21.05.1955. It is claimed that they got the test done by MSME Testing Centre and the test report given by them dated 21.04.2009 showed the sample as Non-Alloy Steel Slabs. On the strength of the said test report they have now come forward to challenge the original show cause notice, dated 31.03.2005.

4. It is not clear as to why such a show cause notice could be challenged especially when the Petitioner had submitted their reply and also now with a further contention that the test report done by MSME is in their favour. Therefore it is entirely in issue for the Respondents to determine and pass orders in the light of the earlier reasonings given by the Division Bench.

5. However Mr. R.Yashod Varadan, learned senior counsel for the Petitioner, stated that the issue is No. longer res integra. The Supreme Court in the case of Commissioner of Customs v. Sayed Ali reported in 2011 (265) E.L.T. 17 (S.C.) has held that the Customs Officer assigned with specific functions of assessment and re-assessment in jurisdictional area where goods imported alone are competent to issue show cause notice u/s 28 of the Customs Act, 1962 as "proper officer" and Collector of Customs (Preventive) had not been assigned such functions. Therefore it is submitted that the impugned order is issued by a Preventive Officer and hence the said show cause notice is itself void abinitio. Therefore the Petitioner is entitled to file the present writ petition. Learned Counsel also fairly submitted that subsequent to the judgment of the Supreme Court, the Government of India, Ministry of Finance, had issued Notification No. 44/2011 -Customs (N.T.), dated 06.07.2011, empowering even the Preventive Officers to issue notice for the purpose of Sections 17 and 28 and this Statutory notification has been issued in exercise of the power u/s 2(34) of the Customs Act.

6. However this Court is not inclined to impugn the show cause notice especially when the Respondents are seized of the matter and the Petitioner has also given its own inputs in coming to the proper conclusion which has been permitted by the earlier Division Bench of this Court. Therefore, it is for the Respondents to pass appropriate orders including the contentions raised before this Court by placing reliance upon the judgment of the Supreme Court in Sayed Ali's case cited supra.

7. Mr. K.Ravi Anantha Padmanabhan learned standing counsel for the Customs Department / Respondent has No. objection for this course of action.

8. Under the said circumstances, while dismissing the writ petition, the Respondent is hereby directed to pass appropriate orders in accordance with law as expeditiously as possible and communicate the result to the Petitioner. No. costs. Consequently, the connected MPs are closed.