(2011) 04 MAD CK 0043

In the Madras High Court

Case No : Contempt Ptn. (MD) No. 458 of 2010 and M.P. (MD) No. 1 of 2010

Sterlite Industries (India) Limited — APPELLANT

Vs

Mr. S. Kannan, The Commissioner of Central Excise, Mr. K.S. Gnanasekar, The Assistant Commissioner of Central Excise, Dhanapalan, The Superintendent of Central Excise and Mr. Raja Climax, The Superintendent of Central Excise — RESPONDENT

Date of Decision : 29-04-2011

Acts Referred:

CENVAT (Credit) Rules, 2001 — Rule 4(5)
Customs Act, 1962 — Section 132, 135(1)

Citation : (2011) 04 MAD CK 0043

Hon'ble Judges : R.S. Ramanathan, J

Bench : Single Bench

Advocate : M. Venkataraman, for S.P. Maharajan, for the Appellant; B. Vijay Karthikeyan, Senior Standing Counsel for Central Excise, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Ramanathan, J.—This application is filed to initiate appropriate action and punish the Respondents for having committed contempt of

the order passed by this Court in M.P.(MD) No. 2 of 2010 in W.P.(MD) No. 8135 of 2010, dated 22.07.2010.

2. It is submitted by the learned Senior Counsel appearing for the Petitioner, Mr. M. Venkataraman, that W.P.(MD) No. 8135 of 2010 was filed

challenging the communication, dated 09.06.2010 by the 1st Respondent and that writ petition was heard along with W.P.(MD) No. 8123 of

2010, which was filed by the Petitioner''s Company challenging the notice issued by the 1st Respondent and after hearing the arguments, in both

the writ petitions, this Court has passed an order, dated 22.07.2010 granting an interim stay of operation of the orders till the disposal of the writ

petitions and after knowing fully well that orders were stayed, the Respondents registered a case against Mr. S. Varadharajan, Vice President

(Indirect Tax) of the Petitioner''s Company, for having committed offences under Sections 132 and 135(1)(i)(D) of the Customs Act 1962 and

arrested the Said Mr. S. Varadharajan, Vice President (Indirect Tax) of the Petitioner''s Company on 23.07.2010 and the action of the

Respondents in arresting the Vice President of the Petitioner''s Company viz., Mr. S. Varadharajan, is gross violation of the order passed in M.P.

(MD) No. 2 of 2010 in W.P.(MD) No. 8135 of 2010 and therefore, they are liable to be punished for contempt.

3. The learned Senior Counsel appearing for the Petitioner further submitted that in the arrest memo as well as in the remand report, it was stated

by the Respondents that during the period Feb'' 2005 to May 2010, the Petitioner''s Company deliberately diverted the Copper products,

manufactured out of inputs procured under Advance License Scheme to the Domestic market violating the Customs Notification, Conditions of the

Bond and the Foreign Trade Policy and this intentional misuse of the Advance License Scheme has led to the duty evasion of more than Rs. 700

Crore (approx) to the exchequer.

4. He further submitted that a perusal of the proceedings of the 1st Respondent in the writ petition, W.P.(MD) No. 8135 of 2010, would also

make it clear that the alleged misuse of Advance License Scheme by the Petitioner''s Company from 2005 to 2010 and the alleged evasion of

customs duty to the tune of 700 Crores was the subject matter of the 1st Respondent, dated 09.06.2010 in that writ petition and that was stayed

by this Court and hence, the Respondents should not have proceeded with that enquiry and arrested Mr. S. Varadharajan, the Vice President

(Indirect Tax) of the Petitioner''s Company.

5. The learned Senior Counsel appearing for the Petitioner''s Company further submitted that when the proceedings of the 1st Respondent in the

writ petition, also relates to the alleged violation of misuse of Advance License Scheme by the Petitioner''s Company and that was stayed by this

Court, the Respondents should not have proceeded further and arrested the Petitioner and the action of the 1st Respondent amounts to contempt of the order passed by this Court and relied upon the judgment reported in All Bengal Excise Licensees Association Vs. Raghabendra Singh and

Others, ., in support of his contention.

6. On the other hand, the learned Senior Standing Counsel appearing for the Respondents submitted the written submission and stated that the

arrest of the Vice President of the Petitioner''s Company was under the provisions of the Customs Act and whereas the proceedings, which was

impugned in W.P.(MD) No. 8135 of 2010, was taken under the provisions of Central Excise Act, more particularly related to violation of

CENVAT Credit Rules and on coming to know of the evasion of customs duty, the Respondents have taken action and there was No. prohibition

or stay or injunction order passed by this Court restraining the Respondents from proceeding further under the provisions of Customs Act and

there cannot be an injunction against any legal proceedings and the officers have No. personal animosity or grudge against the officials of the

Petitioner''s Company and after due deliberation and after conducting proper enquiry, they came to the conclusion that there was evasion of

customs duty and therefore, the action of the Respondents in arresting the Petitioner''s Company, Vice President (Indirect Tax) Mr. S.

Varadharajan, will not amount to contempt.

7. The learned Senior Counsel appearing for the Petitioner also submitted the written submissions and also rejoinder to the written submissions of

the Respondents.

8. I have carefully gone through the written submissions and also oral submissions made by both the Senior Counsels.

9. To appreciate the contention of the learned Senior Counsel appearing for the Petitioner, we will have to see the order, which was impugned in

W.P.(MD) No. 8135 of 2010.

10. It is seen from the said proceedings, a communication was sent by the 1st Respondent in W.P.(MD) No. 8135 of 2010 to the various

Superintendents of Central Excise, stating his assessment on the transactions of the Petitioner''s Company ranging from 2005 to 2009 and also the

alleged act of the Petitioner''s Company in not submitting the challans within 180 days as provided under Rule 4(5) of the CENVAT Rules and

called for the report from the other Officers about the action taken at their end.

11. While dealing with the said W.P.(MD) No. 8135 of 2010, I have discussed the order, dated 09.06.2010 issued by the 1st Respondent in that

writ petition and as rightly submitted by the learned Senior Standing Counsel appearing for the Respondents, that was only an internal

communication between the officers and that cannot be construed as an order affecting the rights of the parties and in that writ petition, I have held

that the same cannot be challenged.

12. Further, it is seen from the arrest memo that the Petitioner was arrested for having committed offences under Sections 132 and 135(1)(i)(D) of

the Customs Act 1962 by giving false information and evaded the customs duty to the tune of 700 Crores approximately. In the remand

application, the 4th Respondent in the contempt petition has stated the reason for the arrest and as stated supra, it was stated clearly that during the

period Feb'' 2005 to May 2010, the Petitioner''s Company deliberately diverted the Copper products manufactured out of inputs procured under

Advance License Scheme to the Domestic market, violating the Customs Notification, Conditions of the Bond and the Foreign Trade Policy.

13. It was further stated in the remand report that Mr. S. Varadharajan, the Vice President (Indirect Tax) of the Petitioner''s Company has also

confessed about the offences committed, in response to the summons, dated 23.07.2010 and therefore, on the basis of the investigation and on the

basis of the alleged confession given by Mr. S. Varadharajan, the said Mr. S. Varadharajan, was arrested for having committed offences under

Sections 132 and 135(1)(i)(D) of the Customs Act. Therefore, according to me, the arrest has nothing to do with the proceedings of the 1st

Respondent in W.P.(MD) No. 8135 of 2010 and on the basis of the independent enquiry and on the basis of the confession alleged to have been

given by the said S. Varadharajan, action was taken for the evasion of customs duty and therefore, the Respondents have not committed any

contempt in the order passed in W.P.(MD) No. 2 of 2010 in W.P.(MD) No. 8135 of 2010, dated 22.07.2010. Therefore, the judgment relied

upon by the learned Senior Counsel for the Petitioner cannot be applied to the facts of this case.

14. In the result, the contempt petition is dismissed. Consequently, connected Miscellaneous Petition is closed. No. costs.