(2010) 01 P&H CK 0232

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 9343 of 2009 (O and M)

Sunil Gupta APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 08-01-2010

Acts Referred:
Customs Act, 1962 — Section 28 , 28BA

Citation : (2011) 269 ELT 55

Hon'ble Judges : Alok Singh, J;A.K. Goel, J

Bench : Division Bench

Judgement

Adarsh Kumar Goel, J.—This petition seeks quashing of notice dated 8-6-2009, Annexure P.9 calling upon the petitioner to show cause why approval for provisional attachment of plot in question u/s 28BA of the Customs Act 1962 (for short, ''the Act'') be not granted.

2. Case of the petitioner is that he was falsely implicated on the allegation of misdeclaration by firms/companies engaged in the import of consignments and evasion of duty. The petitioner was granted anticipatory bail but was illegally arrested for which he filed a contempt application. He had several properties and there is no apprehension of his disposing of the said properties. In such a situation, the drastic power u/s 28BA of the Act could not be exercised. The circular dated 30-6-2008, Annexure P. 10 issued by the department provides that the power should be exercised only if there is reasonable basis for holding that there will be loss of interest to the revenue. In the present case, there is no apprehension of any loss to the revenue which may justify exercise of power.

3. Reply has been filed on behalf of the respondents justifying the issuance of impugned notice by stating that Show Cause Notice dated 5-2-2009 u/s 28 of the Act was pending against the petitioner alleging evasion of duty to the extent of Rs. 712.77 crores and misdeclaration of value of goods. During investigation, statement of the petitioner was recorded wherein he admitted misdeclaration and undervaluation of imports in the name of bogus firms. Impugned action was

necessary for safeguarding the interest of the revenue.

4. We have heard learned counsel for the parties and perused the record.

5. Contention raised on behalf of the petitioner is that there is no basis for exercise of the power and impugned Show Cause Notice is without jurisdiction. There is nothing to substantiate that the impugned action was in the interest of revenue. He further submits that the proceedings are result of contempt petition filed by the petitioner and are, thus, mala fide. In the alternative, it was submitted that the direction in the impugned notice advising the petitioner not to sell, transfer, mortgage, lease or otherwise alienate or encumber the property in question was without jurisdiction.

6. Learned counsel for the respondents supports the impugned notice and submits that the petitioner has been offered opportunity by way of Show Cause and this petition is premature. The impugned notice cannot be held to be mala fide or without jurisdiction.

7. We have considered the rival submissions.

8. We are of the view that the petition is premature at this stage. Merely because a contempt petition is pending, cannot be a ground to hold that the Show Cause Notice is mala fide or untenable. Admittedly, Show Cause Notice u/s 28 of the Act is pending against the petitioner in which case provisions of Section 28BA of the Act could be invoked for safeguarding the interest of the revenue. The evasion alleged is of Rs. 712.77 crores. In such a situation, the advice to the petitioner not to alienate the property till notice was pending cannot be held to be untenable. We are unable to hold that the impugned Show Cause Notice is without jurisdiction.

9. The petition is dismissed.

10. We make it clear that we have not expressed any final view on merits. The statutory authority may take its decision after considering the view point of the petitioner, in accordance with law, without being influenced by any observation made hereinabove.

