

(1990) 01 MAD CK 0057
In the Madras High Court

Traders Pvt. Ltd.

APPELLANT

Vs

Collector of Customs

RESPONDENT

Date of Decision : 01-01-1990

Acts Referred:

Customs Act, 1962 — Section 108

Citation : (1990) 48 ELT 327

Hon'ble Judges : S. Ramalingam, J

Bench : Single Bench

Judgement

S. Ramalingam, J.—The petitioners publish newspapers in English and other languages. They imported fourteen Printing Machinery and they were allowed to be cleared of giving the benefit of the Customs Notification No. 114/80 (Cus.) . Long afterwards, proceedings were initiated by issue of a show cause notice under which it was stated that the petitioners are not settled to the benefits of Notification No. 114/80 (Cus.) and why orders to the effects should not be made. They were also informed that differential duty will have to be paid by them if it is held that the Notification No. 114/80 (Cus.) is not applicable. The petitioners submitted a representation in which inter alia they stated that when just like the petitioner, several other persons had imported identical machineries from abroad and when all these imports were given the benefit of the Notification No. 114/80 (Cus.) and those cases were not reopened, there is absolutely no justification for singling out the petitioners for hostile treatment. In their letter dated 15-11-1988, the relevant file from the concerned assessing officers who cleared similar machineries imported by others by giving the benefit of the Notification No. 114/80. When this application was dismissed by orders dated 30-1-1989 observing as follows :

"But in the instant case, the petitioners require certain documents and witnesses to be summoned for the purpose of a fair adjudication of the case. For that purpose, the petitioners have filed an application on 15-11-1988 u/s 108 of the Customs Act to call for certain other documents and certain witnesses. It is open

to the department either to reject or to allow the application filed by the petitioners. At this stage, it is unnecessary to go into the question whether the petitioners are entitled to invoke u/s 108 of the Customs Act, 1962. Here is quasi-judicial Authority before whom an application is filed during the course of an adjudication proceedings. In my view, he is duty bound to dispose of the application one way or other."

After the disposal of the writ petitioners in that manner, the respondent by his notice dated 8-2-1989 informed the petitioner that the next hearing would be held by him on 21-2-1989 at 10.30 a.m. On receipt of this notice, the authorized representatives of the petitioners M/s. Guru and Varadan, Chartered Accountant in their letter dated 15-2-1989 in which after extracting the relevant portion of the judgment in W. P. No. 15980/89, requested the respondent to dispose of the application filed by them on 15-11-1988 before proceeding further in the matter. They concluded that letter by seating as follow :

"The respondents submit that unless the Collector disposes of the application u/s 108 one way or the other we will be constrained to move the Hon"ble High Court by way of appropriate proceedings. At a time convenient to you we would like a hearing on the submissions made in this letter. Kindly give us a date for the same before taking any proceedings."

Obviously, the petitioners wanted to convince the respondent that their application filed on 15-11-1988 merits favorable disposal and it is for that purpose they prayed for a hearing to be given before the respondent could proceed further with the matter. The petitioners claim that their authorized representatives also sent a letter dated 10-2-1989 in which they prayed for adjournment of the hearing to be held on 21-2-1989 on the plea that the father's ceremony of one of the partners by name Mr. Gurumurthy falls on that date. The contention of the petitioners is that in spite of receipt of the representation dated 15-2-1989 and the letter dated 10-2-1989, the respondent has chosen to pass orders on merits in the impugned order dated 24-2-1989 imposing a liability to pay duty, penalty etc. on the petitioners. The petitioners submit that the order of the respondent is in gross violation of not only the earlier orders of this Court made in W. P. No. 115898/88 but also the principles of natural justice because orders of adjudication had been made by the respondent without even affording a hearing to the petitioner on merits. It is submitted by the learned counsel Mr. Sri Ram Panchu that even assuming that the representation of the petitioners dated 15-2-1989 was liable to be rejected and the respondent was not obliged to pass any orders on merits on the application filed by them on 15-11-1989, yet the respondent is duty bound to inform the petitioner by a reply that their request contained in their letter dated 15-2-1989 cannot be complied with and the proceedings would go on as contemplated on 21-2-1989. The respondent has not chosen to adopt this course; but has chosen to set the petitioners expert and render a finding against them which the petitioners state, is not fair.

2. In answer to the above submission, Mr. P. Narasimhan, learned Senior Central Government Standing Counsel would submit that the letter for adjournment dated 10-2-1989 purported to have been sent along with the representation dated 15-2-1989 was not in fact received in the office of the Collector. He would submit that the only representation received from the petitioners was dated 15-2-1989 in which the petitioners have taken a stand that orders should be made to their earlier representation dated 15-11-1988 and under law, the respondent is not therefore the adjudication orders passed on 21-2- 1989 without further adjourning their case from that date, is correct.

3. After giving an anxious consideration to the point in issue, it is seen that even as early as on 15-11-1989, the petitioners had requested this respondent to summon certain documents which according to the petitioners are relevant for proper and fair adjudication of the matter in issue before him. The petitioners believe that those documents in respect of import of similar machineries are summoned and produced and if reliance there on is made, it would be seen that the import of similar machineries by the petitioners would not variant any duty liability and penalty. When the petitioner came by way of writ petition to his Court by filing W. P. No. 15898/88 orders were made enabling the respondent to consider that representation dated 15-11- 1988 and pass orders thereon. The purport of that order is that probably the respondent should consider that representation dated 15- 11-1988 and pass orders for summoning those documents or pass orders refusing to summon those documents on valid grounds. That does not appear to have been done in the instant case In spite of that, that representation dated 15-11-1988 had been considered only in the final order dated 22-11-1989. That apart, when the respondent intimated the petitioners by his letter dated 8-12-1989 that the hearing will take place on 21-2-1989, the petitioners have promptly in their representation dated 15-2-1989 prayed that the earlier representation dated 15-11-1988 should be disposed of on merits. They had also requested the hearing on the maintainability of the application. But the respondent has not chosen to send any reply. Even otherwise that the letter dated 10-2-1989 sent by the authorized representatives of the petitioner had not been received by the respondent, yet, even on the representation dated 15-2-1989, the petitioners should have been at least informed that their request would not be complied with and the hearing would go on 24-2-1989 and if the petitioners chose to remain absent on that date, it would be at their peril. The respondent has not taken that course and has not acted in conformity with the principle of natural justice while he passed orders adverse to the petitioners on 24-2-1989. In this view, the impugned orders dated 24- 2-1989 is quashed and the respondent is at liberty to restore the proceedings and dispose it of fresh in accordance with law if so desired after affording a reasonable opportunity to the petitioners to state their case. No costs.