2023:DHC:7449-DB

$~SB-2

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) 12233/2019**

M/S SUMAT PERSHAD AND SONS AND ANR. .....Petitioners

Through: Mr.Mukesh Anand, Advocate with Mr.Sakshit Bhardwaj and Mr.Raghav Gupta, Advocates.

versus

COMMISSIONER CUSTOMS (EXPORT) AND ANR. ..... Respondents

Through: Ms.Samiksha Godiyal, Advocate with Mr.Mohit Nege, Mr.Anchit Singla and Mr.Nishchaiy Sharma, Advocates.
Mr.Bhagvan Swarup Shukla, CGSC with Mr.Saksham Sethi, Advocate for UOI.

% Date of Decision: 06th October, 2023

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T (ORAL)

per C. HARI SHANKAR, J

REVIEW PET.31/2020 & CM APPL.3957/2023

1. The present review petition is directed against the judgment dated 27th November, 2019 passed by this Court in W.P.(C) 12233/2019.The said judgment was carried in appeal to the Supreme Court by way of S.L.P.(C) 30509/2019 [***M/S Sumat Pershad And Sons & Anr Vs. Commissioner of***

Customs (Export) & Anr.] which was disposed of, by order dated 9th January, 2020 in the following terms:-

> *"Learned counsel for the petitioners invited our attention to paragraph 39 of the Writ Petition to contend that the specific grievance of the petitioners was that the authority did not furnish copies of the relevant documents referred to in paragraph 7 of the communication dated 30.07.2019, despite the direction issued by the High Court and yet proceeded to pass Order-in-Original No. 06/2019/SUNIL TATED/COMR/EXP/ICD/TKD (DIGIT NO. 20180220161942-903 on 11.10.2019, that too without giving any opportunity of hearing to the petitioners. That grievance has been glossed over by the High Court.*
>
> *In that case, it will be open to the petitioners to resort to remedy of review before the High Court, which be filed within four weeks from today.*
>
> *If the Review Petition is decided against the petitioners, it will be open to the petitioners to challenge the said decision as well as the impugned judgment by way of Special Leave petition before this Court.*
>
> *The Special Leave Petition is disposed of accordingly.*
>
> *Pending applications, if any, stand disposed of."*

2. The matter has thus been re-listed before this Court consequent to the aforesaid order passed by the Supreme Court.

3. Mr.Mukesh Anand, learned counsel who appears for the review petitioner has invited our attention to para 7 of the communication dated 30th July, 2019, addressed by the petitioner to the Commissioner of Customs, who was to adjudicate the Show Cause Notice No. C. NO. VIII/ ICD/ 10/ TKD/ SIIB-EXP/ INV/ SUMAT/ 114/ 2016 dated 07th March, 2016. The said paragraph may be reproduced in extenso, thus:-

> *"7. In view of above submissions, the following documents/information may kindly be provided to us to enable us to submit reply to the Show Cause Notice. The Cross Examination of all concerned persons as requested and Personal Hearing may be granted on submission of reply:-*
>
> *(i) Copy of all the Bills of Entry on prescribed format as per Computer Data Base/EDI of Customs Department;*
>
> *(ii) The Copy of all the Licences/scrips containing all annexures and amendments, under which exemption from Customs Duty was granted, may kindly be provided;*

(iii) Copy of Statement of Sh. Sharafat Hussain recorded on 15.11.2017 and 16.11.2017 by SIIB;
(iv) The Copy of Letters Issued by DGFT for amendment of Licences;
(v) The Name of all the hiearchy officers who have registered, verified, checked, debited and audited the: Export Licences (DFIA, DEPB, FOCUS etc) in manual system as well as on-line system involved in SCN, may kindly be informed and the cross examination of all of them to find out the facts, may kindly be allowed.
(vi) The' parameters which are required to be verified by the officers before granting Customs 'out of charge' as prescribed in the relevant exemption notifications and Customs Manual;
(vii). The name of the officers who have allowed out of charge may kindly be communicated and the cross examination of all of them to may kindly be allowed.
(viii) The status of investigations by the Customs and Police Authorities may kindly be informed;
(ix) The documents regarding the action taken for protection of Passwords and action against the officers on password compromise in terms of Board's instructions vide F. No. 401/77/2009-CUS.III, dated 15.05.2009 under the signature of Kameshwari Subramanian (Joint S.C. of J.S) may kindly be provided;
(x) The documents relating to action taken against the Customs Officers who have registered such licenses, debited and audited them and allowed Customs out of charge relating to clearance of goods under Show Cause Notice may kindly be provided;
(xi) The documents relating to follow up of money trail to identify the real beneficiary, who ·have received the amount paid by the Importers through Banking Channels to the various Licence Brokers as Premium/ consideration of Licences, may kindly be communicated.
(xii) Statement of account in the bank of Shrafat Hussain showing the cheques issued by him to the firms of Mr. Vinod Kumar Prathor may be provided;
(xiii) The statement of Bank Account of Mr. Vinod Kumar Prathor in which he received amount from Mr. Shrafat and disbursement of the funds by him may kindly be provided;
(xiv) The document relating to the status of Mr. Vinod Kumar Pathror on the basis of which the entry in Customs Computer Data/EDI room was allowed to him may kindly be provided;
(xv) The total amount recovered pending investigations may kindly be communicated, so, that the m/s Paper Merchant Association, Kagaz Bhawan, Chawri Bazar, Delhi may be requested to provide the party wise break up of amount.
(xvi) Copies of all the docket files with note-sheets / examination reports pertaining to BEs wherein alleged Licences / Scrips used as mentioned in SCNs.

(xvii) Copies of Item wise debiting ledger wrt to Registration Number of Licences / scrips.
(xviii) Copies of Item wise debiting ledger wrt to valid Licences / Scrips but whose values is allegedly enhance after amendments."

4. Mr.Mukesh Anand, learned counsel for the review petitioner submits that the aforesaid representation was required to be decided in the first instance, as per the directions of the Division Bench of this Court in the order dated 6th September, 2019 which reads thus:-

*"**W.P.(C) 9680/2019***

1. We have heard learned Senior counsel for the petitioners who has submitted that application dated 30th July, 2019 (annexure P-5) has been preferred before the Respondent No.1 for allowing the cross examination of witnesses which is referred to in the show cause notice given by the respondents to these petitioners. These petitioners have demanded certain documents so that reply to the show cause notice can be given. It is also submitted by the learned Senior counsel for the petitioner that earlier an order was passed on 22nd July, 2019 in W.P .(C) 7830/2019 whereby this Court has directed the respondents to adjudicate the show cause notice within a period of four weeks.
2. Having heard learned counsel for both sides and looking to the facts and circumstances of the case, we hereby direct the Respondent No.1 to decide the application preferred by these petitioners which is dated 30th July, 2019 (AnnexureP-5) whereby the petitioners are seeking cross examination of few witnesses and also demanding certain documents from the respondents authorities.
3. The decision shall be taken by the Respondent No.1 upon application of the petitioner dated 30th July, 2019 (Annexure P-5) in accordance with law as expeditiously as possible and practicable, preferably within a period of three weeks from today.
4. With these observations, this writ petition is hereby disposed of.
5. Liberty is reserved with this petitioner to approach the appropriate Tribunal/Court/Forum if so advised, in accordance with law with proper averments, allegations and annexures.
6. In view of the aforesaid order, time limit prescribed by this Court for adjudication of the show cause notice in our order dated 22nd July, 2019 in W.P.(C) 7830/2019 is extended and the same shall be adjudicated upon as expeditiously as possible and practicable, preferably within a period of three weeks from today."

5. Mr.Mukesh Anand, learned counsel for the review petitioner, points out that, in para 2 of the order dated 6th September, 2019, the Division Bench had directed the Respondent No.1 i.e. learned Commissioner, to decide the application dated 30th July, 2019 preferred by the petitioner within three weeks and had, therefore, enlarged the time available for deciding the show cause notice itself. Instead, submits Mr.Mukesh Anand, the learned Commissioner proceeded to decide the show cause notice within the said period of three weeks and has left the request contained in para 7 of the letter dated 30th July, 2019 incompletely addressed. The especial grievance of Mr.Mukesh Anand is that the learned Commissioner has not returned any finding, one way or the other, on the request of the petitioner for being provided copies of the licenses/scrips containing all annexures and amendments under which exemptions for customs duty was granted and which formed subject matter of the dispute in the show cause notice.

6. We have perused the order of the learned Commissioner dated 11th October, 2019. The learned Commissioner has dealt with the aforenoted request contained in the representation dated 30th July, 2019 in para 15 of the order which reads as thus:-

> *"15. Before parting, I consider it necessary to discuss the following issues pleaded by the noticees:-*
>
> *(i) The two case laws cited by the Noticee's advocate pleading that the duty liability cannot be fastened on the importer. We examined the referred case laws and find that they are not applicable to the present proceedings as the facts are totally different, In the case of Sumit Wool Processors India. Ltd., the Tribunal has also referred to the other case law cited by the advocate of the Noticee that of Ineos (ABS), the DEPB scrips were obtained fraudulently by inflating the value of exports etc. In the present proceedings, the licenses were correctly obtained. Thus, without dwelling too much on the issue, it would suffice to say that the case laws cited are not relevant to the facts of the present proceedings and hence have no persuasive value.*
>
> *(ii) The Noticee No. 1 has also pleaded that they have not been supplied*

with some of the relied upon documents. Whereas on perusal of the available records and case file I find that the representative of the Noticee No.1 has given a categorical and unambiguous acknowledgement duly signed by Shri Sudhir Kumar Jain, Partner M/s Sumat Pershad and Sons that he has received legible copies of all the relied upon documents on behalf of the Noticee no. 1 as well as on behalf of the Noticeeno.2 also on 07.03.2016. Similarly, the authorized representative of Shri Sharafat Hussain, who appeared at the time of Personal Hearing on 09.09.2019 submitted that the relied upon documents have not been received by them. However, from the records it has been ascertained that copies of all the relied upon documents have been supplied to Shri Sagar Rohtagi, Advocate for Shri Sharafat Hussain on 03.06.2019 and an acknowledgement to this effect is available on record.

(iii) The Noticee No.1 requested for allowing cross-examination of the officer. Relying the of Hon'ble Supreme Court in the case of Surjeet Singh Chhabra vs. Union of India reported in 1997 (89) ELT 646(SC) I reject their request of cross-examination of the officers in the instant case as their role in clearance of imported goods is undisputed.

(iv) The Order of the Hon'ble High Court Delhi in the matter of preventive detention of Noticee No.3 under the COFEPOSA Act, 1974 has no bearing in this proceeding.

(v) The Noticee No.4 did not join the investigation as well as adjudication proceeding. Hence I am inclined to take decession in the instant SCN ex-parte to that extent."

7. We find on a comparison with para 15 and para 7 of the communication dated 30th July, 2019 that, in fact, the learned Commissioner has not returned any finding of the petitioner's request for being provided the original copies of the licenses/scrips as requested in para 7 of the representation dated 30th July, 2019.

8. Ms. Samiksha Godiyal, learned standing counsel for the revenue, submits that the learned Commissioner has provided some of the documents/details sought by the petitioner.

9. Be that as it may, seen in the light of the order passed by the Supreme Court and the specific requests made by the petitioner in para 7 of the representation dated 30th July, 2019, it appears that the finding, in our

judgment dated 27th November, 2019 to the effect that the learned Commissioner had adequately dealt with the representation dated 30th July, 2019 does not appear to be correct.

10. Accordingly, the application for review is allowed. W.P.(C) 12233/2019 is restored to its original number to be re-heard.

11. List before the Bench as per Roster on 8th November, 2023.

C. HARI SHANKAR, J

MANMOHAN, J

OCTOBER 06, 2023
TS