

THE HIGH COURT OF SINDH, KARACHI

C. P. No. D – 3000 of 2011

Present
Mr. Justice Aqeel Ahmed Abbasi
Mr. Justice Arshad Hussain Khan

Date of hearing : 14.12.2017
Date of order : 14.12.2017
Petitioner : M/s. Dewan Cement
through Mr. Omair Nisar, Advocate.
Respondents : The Federation of Pakistan through
Secretary (Revenue Division),
Islamabad & others through
Ms. Masooda Siraj, Advocate and
Mr. Mir Hussain,
Assistant Attorney General.

ORDER

AOEEL AHMED ABBASI, J:- Instant petition was filed on 09.10.2011 by the petitioner company with the following relief:-

- a. *To declare the act of the respondents as illegal, abinitio and without lawful authority, the act of disposal of Petitioner's Goods without complying the provisions of Section 82 and Section 201 of the Customs Act. And disposal without due notice to the Petitioner is void and illegal.*
- b. *To direct the respondents to release the claimed amount of Rs.55,660,051/- (Rupees Five Crore Fifty-Six Lac Sixty Thousand and fifty only) to the Petitioner in compliance of Section 201 of the Customs Act, 1969.*
- c. *To direct the act of respondents' deliberate detention of legitimate amount of Rs.55,660,051/- (Rupees Five Crore Fifty Six Lac Sixty Thousand and fifty only) and using the same under their command and control since 2005 till todote is without lawful authority and without jurisdiction and declare the rights of the Petitioners claiming the same proceed of Rs.55,660,051/- (Rupees Five Crore Fifty Six Lac Sixty Thousand and fifty only) are guarded against arbitrary violation cause by the executives/respondents.*
- d. *Rs.88,748,760/- (Rupees Eight Crore Eighty Seven Lac eight Thousand Seven Hundred & Sixty only) as embargo against the release of payment of Sale Proceeds in respect of auctioned goods, Rs.55,660,051/-(Rupees Five Crore Fifty Six Lac Sixty Thousand and fifty only) and the advice to settle the same prior to claiming benefit of sale proceeds through letter dated 24.7.2006 is ultra viral, without lawful authority and without jurisdiction.*

e. To grant any other relief or relieves deem fit and proper under the circumstances of the case.”

2. On 05.09.2011, when instant petition was fixed in Court at katcha peshi stage, learned counsel for the petitioner requested for adjournment to prepare the case and the matter was adjourned to 22.09.2011. Thereafter, instant matter was fixed in Court on 21.01.2012, when Notice was issued to the respondent. On 28.02.2012, matter was again fixed in Court at katcha peshi stage, when at the request of the learned counsel for the petitioner, instant petition was directed to be tagged with C.P.No.D-4040/2011 and Special Customs Reference Application No.303/2013 filed by the petitioner, which according to learned counsel for the petitioner, were pending before this Court in the case of the petitioner.

3. As per case diary, it appears that petitioner and their counsel did not pursue the petition vigilantly, as the matter was fixed in Court on number of dates, whereas, no substantial prayer was made and it was simply adjourned again and again up till 14.11.2011 alongwith C.P.No.D-4040/2011. However, on 28.11.2011, the connected petition i.e. C.P.No.D-4040/2011 filed by the petitioner seeking somewhat similar relief i.e. refund and adjustment of tax liability, was dismissed by a Divisional Bench of this Court vide detailed order, in the following terms:-

“6. Admittedly, the petitioner has not complied with the terms of the abovementioned consent order passed by a Division Bench of this Court. On the contrary, the petitioner has filed another petition i.e. C.P. No.D-3000 of 2011 on 10.9.2011, whereby another dispute with regard to seeking refund or adjustment of an amount of Rs.55,660,051/- claimed to be the sale proceeds in respect of auctioned goods of the petitioner, has been raised by the petitioner. Whereas, through instant petition filed on 17.12.2011, the petitioner, besides having Impugned Warrant of Attachment issued by the respondents for the recovery of the impugned demand outstanding against the petitioner, has also sought a declaration to the effect that the petitioner is entitled to refund of an amount of Rs.55660051/- stated to be the sale proceeds of the goods of the petitioner auctioned by the respondents. It has been further claimed that the above said amount may not be adjusted towards the outstanding demand till final disposal of the Custom Appeal

No.K-336/2006 pending before the Customs Appellate Tribunal. However, from perusal of the record, it is seen that the petitioner has not filed any document or proceedings, which may support the contention of the petitioner that an amount of Rs.55660051/- has been created as refund in favour of the petitioner by the respondents.

7. *We may observe that in taxing statutes, including the Customs Act, 1969, a separate self-contained hierarchy has been provided under the law to seek relief against an adverse order passed by the customs authorities, by filing appeal/revision, whereas the request for interim relief, including the stay of demand can also be entertained by such appellate authorities as provided under the statutes. In the instant matter, in view of the conduct of the petitioner, the Customs Appellate Tribunal was pleased to decline the request of petitioner seeking stay of the entire impugned demand, whereafter the petitioner approached this Court through a C.P.No.D-2003 of 2011 and a Division Bench of this Court, through a consent order dated 16.6.2011, was pleased to grant substantial relief to the petitioner in the terms as reproduced hereinabove in paragraph 5. The petitioner in total disregard of the consent order, instead of making payment of any outstanding liability, filed yet another petition i.e. C.P.No.D-3000 of 2011 as well as the instant petition with an aim not to make any payment towards its admitted outstanding tax liability. Such conduct of the petitioner, besides being dubious, is also contemptuous in nature, as the petitioner did not even comply with the terms of a consent order passed by this Court in C.P.No.D-2003 of 2011. This fact alone disentitles the petitioner from seeking any discretionary relief from this Court in extra-ordinary constitutional jurisdiction.*

8. *The petitioner has not been able to show as to how the impugned recovery proceedings of long outstanding amount towards duty and taxes against the petitioner, particularly in the absence of any stay by competent forum, and in view of the consent orders dated 16.6.2011 passed by this Court in C.P.No.D-2003 of 2011, are illegal and without lawful authority.*

9. *In view of hereinabove facts, we are of the view that instant petition, besides being devoid of any merits, amounts to abuse of the legal proceedings, which was accordingly dismissed alongwith*

all pending applications vide our short order dated 28.11.2012 and these are the reasons for such short order.”

4. Nothing is available on record, which may reflect as to how, instant petition was not taken up for hearing alongwith aforesaid petition, inspite of the fact that it was fixed for hearing on the same date i.e. 28.11.2011, whereas, no order is available on record to show that instant petition was directed to be taken up for hearing separately from other pending cases. Record further shows that after dismissal of the aforesaid petition by a Divisional Bench of this Court, no useful progress could be made in the instant petition nor the petitioner could obtain any interim order in their favour relating to their claim. It has been further observed that after 28.08.2015, instant matter was not fixed in Court, and was eventually fixed in Court on 05.10.2017 after a lapse of about more than two years, when following order was passed:-

“05.10.2017:

*Mr. Omair Nisar, Advocate for the Petitioner.
Mr. Javed Ahmed, Advocate holds brief for
Ms.Masooda Siraj, Advocate for the Respondents.*

Learned counsel for the Petitioner requests for adjournment to prepare the case. Mr. Javed Ahmed, advocate holds brief for Ms. Masooda Siraj, advocate for the Respondent, who is reportedly busy before another Bench in a part heard matter.

The instant petition is pending since 2011 without any useful progress, it appears that the Petitioner is not vigilant to pursue the matter, however, since the counsel for Petitioner has requested for time to prepare the case, we are adjourning the matter to 16.11.2017, with caution that if the counsel for Petitioner does not proceed with the matter on the next date, the petition will be dismissed on account of non-prosecution. Learned counsel for the Petitioner is also directed to assist this Court as to the maintainability of the instant petition in view of the prayer clauses, which prima-facie cannot be granted while exercising the constitutional jurisdiction.

Office is directed to tag the file of C.P.No.D-2003/2012 with the instant petition. Learned counsel is

also directed to place on record the certified copies of the orders passed by this Court in the aforesaid petition alongwith statement before the next date of hearing.”

5. On 14.12.2017, when the matter was taken up for hearing, learned counsel for the petitioner was confronted with hereinabove facts and was directed to assist this Court as to maintainability of instant petition, keeping in view the disputed facts agitated through instant petition and also dismissal of similar petition by this Court, however, learned counsel could not submit any satisfactory response to this effect, on the contrary, filed an statement alongwith annexures including Memos of Constitutional Petitions No.D-2003/2011, 4040/2011 & 2506/2015 and order sheet in Special Customs Reference Application No.303/2013 in the case of the petitioner. Learned counsel for the petitioner was confronted as to how the documents filed today through statement, support the claim of the petitioner relating to refund and adjustment of tax liability for the various tax period, in the absence of any order passed by the Tax Authorities of any appellate forum to this effect, however, no plausible explanation could be offered by the petitioner. It was contended by learned counsel that respondents may be directed to release an amount of Rs.55660051/- being the sale proceed of auction of the consignment of the petitioner in violation of law, or to make adjustment of such amount towards tax liability/demand against the petitioner.

6. Learned counsel for the respondent has vehemently opposed the contention of the learned counsel for the petitioner and has drawn the attention of this Court to the parawise comments filed on behalf of the respondent in the instant case and the legal objection raised as to maintainability of instant petition. It has been contended by the learned counsel for the respondent that petitioner is chronic defaulter in payment of duty and taxes inspite of the fact that similar petitions filed by the petitioner challenging the recovery proceedings, as well as reference i.e. SCRA No.458/2011, have already been dismissed by this Court. According to learned counsel for the respondent, seriously disputed facts and baseless allegations have been agitated through instant petition by the petitioner in the absence of any material in order to cause further delay in payment of

admitted duty and taxes by the petitioner, hence requests that instant petition may be dismissed with cost.

7. We have heard the learned counsel for the parties, perused the record with their assistance and have also examined the chronology of the proceedings filed by the petitioner against the recovery proceedings initiated by respondents toward liability of duty and taxes. Record shows that certain demand has been created by the respondents through various orders, which were assailed by the petitioner before the statutory forums including Appeal No.K-374/2007, SCRA No.458/2011, and appeal to the Hon'ble Supreme Court being CPLA/CA No.151/K-2013. However, as per comments filed on behalf of the respondent, which have not been disputed by the petitioner, above appeal, reference and CPLA/CA have already been dismissed. The petitioner has not attached any order passed by the competent authority or by any judicial forum, which may support the contention of the petitioner with regard to claim of refund or adjustment of liability of duty and taxes as prayed through instant petition. The petitioner was specifically confronted with hereinabove facts and circumstances of the case and was required to assist this Court as to maintainability of instant petition, however, could not submit any plausible explanation nor could explain as to why, after having filed instant petition on 10.09.2011, in duplication of earlier similar petitions including C.P.Nos.D-2003/2011 and 4040/2011, instant petition is maintainable for the same cause of action and the relief which has already been declined in the earlier petitions. It may be observed that unless there is valid cause of action having arose to an aggrieved party, who can demonstrate that any act, omission, or the order passed by a public functionary either suffers from same jurisdictional error, or has been passed in violation of law and principles of Natural justice, or suffers from some patent illegality, and there is no adequate alternate remedy available to an aggrieved party for redressal of such grievance, the constitutional jurisdiction of High Court under Article 199, particularly, while agitating disputed facts, cannot be permitted to be invoked, particularly to frustrate the legal proceedings or to delay the recovery proceedings in respect of demand of duty and taxes created through quasi-judicial orders in accordance with law. This Court under somewhat similar facts and circumstances has already dismissed the petition filed by the petitioner i.e. C.P.No.D-4040/2011 vide order dated 28.11.2012, in the following terms:-

“6. Admittedly, the petitioner has not complied with the terms of the abovementioned consent order passed by a Division Bench of this Court. On the contrary, the petitioner has filed another petition i.e. C.P. No.D-3000 of 2011 on 10.9.2011, whereby another dispute with regard to seeking refund or adjustment of an amount of Rs.55,660,051/- claimed to be the sale proceeds in respect of auctioned goods of the petitioner, has been raised by the petitioner. Whereas, through instant petition filed on 17.12.2011, the petitioner, besides having Impugned Warrant of Attachment issued by the respondents for the recovery of the impugned demand outstanding against the petitioner, has also sought a declaration to the effect that the petitioner is entitled to refund of an amount of Rs.55660051/- stated to be the sale proceeds of the goods of the petitioner auctioned by the respondents. It has been further claimed that the above said amount may not be adjusted towards the outstanding demand till final disposal of the Custom Appeal No.K-336/2006 pending before the Customs Appellate Tribunal. However, from perusal of the record, it is seen that the petitioner has not filed any document or proceedings, which may support the contention of the petitioner that an amount of Rs.55660051/- has been created as refund in favour of the petitioner by the respondents.

7. We may observe that in taxing statutes, including the Customs Act, 1969, a separate self-contained hierarchy has been provided under the law to seek relief against an adverse order passed by the customs authorities, by filing appeal/revision, whereas the request for interim relief, including the stay of demand can also be entertained by such appellate authorities as provided under the statutes. In the instant matter, in view of the conduct of the petitioner, the Customs Appellate Tribunal was pleased to decline the request of petitioner seeking stay of the entire impugned demand, whereafter the petitioner approached this Court through a C.P.No.D-2003 of 2011 and a Division Bench of this Court, through a consent order dated 16.6.2011, was pleased to grant substantial relief to the petitioner in the terms as reproduced hereinabove in paragraph 5. The petitioner in total disregard of the consent order, instead of making payment of any outstanding liability, filed yet another petition i.e. C.P.No.D-3000 of 2011 as well as the instant petition with an aim not to make any payment towards its admitted outstanding tax liability. Such conduct of the petitioner, besides being dubious, is also contemptuous in nature, as the petitioner did not even comply with the terms of a consent order passed by this Court in C.P.No.D-2003 of 2011. This fact alone disentitles the petitioner from seeking any discretionary relief from this Court in extra-ordinary constitutional jurisdiction.

8. The petitioner has not been able to show as to how the impugned recovery proceedings of long outstanding amount towards duty and taxes

against the petitioner, particularly in the absence of any stay by competent forum, and in view of the consent orders dated 16.6.2011 passed by this Court in C.P.No.D-2003 of 2011, are illegal and without lawful authority.

9. *In view of hereinabove facts, we are of the view that instant petition, besides being devoid of any merits, amounts to abuse of the legal proceedings, which was accordingly dismissed alongwith all pending applications vide our short order dated 28.11.2012 and these are the reasons for such short order.”*

8. In view of hereinabove facts and circumstances of the case, we are of the considered opinion that instant petition besides being devoid of any merit, has been filed by the petitioner to create confusion, and to cause delay in payment of admitted liability of duty and taxes, which has been duly confirmed by appellate forums, whereas, reference filed by the petitioner before this Court and the CPLA/CA before the Hon'ble Supreme Court as referred to hereinabove, have already been dismissed, therefore, the same is liable to dismissed. Accordingly, instant petition was dismissed vide our short order dated 14.12.2017 and above are the reasons for such short order.

9. Before parting with the order, we may clarify that we have not recorded any finding with regard to claim of the petitioner relating to refund/adjustment of duty and taxes, if any, and in case, if there is lawfully created refund in favour of the petitioner, which could otherwise, be allowed adjustment against the petitioner's liability towards duty and taxes, then petitioner may be at liberty to approach the concerned authority/forum along with relevant record and order(s) for seeking such adjustment in accordance with law.

JUDGE

JUDGE

Nadeem