



P. V. Rane

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY****CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 7882 OF 2023**

Karl Mayer Stoll Throukevin Socha & Anr. ..Petitioners  
Vs.  
The Union of India & Ors. ..Respondents

**AND****WRIT PETITION NO. 10561 OF 2023**

Karl Mayer Stoll Textilma Schinenfabrik GMBH  
through H. Raja Poptani. ..Petitioner  
Vs.  
The Union of India & Ors. ..Respondents

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Mr. Abhishek A. Rastogi with Ms.Meenal Songire and Renita Alex, for  
the Petitioners.

Mr. J. B. Mishra with Nitee Punde and Mamta Omle with Ashutosh  
Mishra, for Respondents.

Mr. Shreyansh Mohan, Deputy Director, DGGI, Pune, present.

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**CORAM : G. S. KULKARNI &  
JITENDRA JAIN, JJ.**

**DATE : SEPTEMBER 25, 2023.**

**P.C.:**

1. The primary issue as raised in these petitions is in regard to the jurisdiction of the Designated Officer to issue show cause notices to the petitioners who are foreign exporters, primarily on the ground that the



Customs Act would not be applicable to the transactions which have taken place in a foreign territory. Admittedly a show cause notice as to the petitioners are against the entities situated in Germany who had sold goods which were subject matter of export and that too prior to the amendment of the Customs Act that is the amendment incorporating subsection (2) of Section 1 of the Customs Act by the Finance Act,2018 (Act No.13 of 2018 with effect from 29 March 2018).

2. On 17 July 2022, we had passed a detailed order referring to the contentions as raised by the petitioners. For convenience, we refer to the said order which reads thus:-

1. We have heard Mr. Rastogi, learned counsel for the petitioners and Ms. Omle, learned counsel for the respondent/revenue.
2. Learned counsel for the revenue seeks time to take instructions as also she has not received a copy of the proceedings from her Department.
3. The challenge in this petition is to the six show cause notices annexed at Exhibit "A" to the petition. The contention as urged by the petitioners is that it is a foreign entity. It is contended that the petitioners have no idea of the transaction/invoice in question and that in no manner whatsoever, it was involved in the capacity as a foreign entity having exported its goods from Germany. The petitioners' contention is that the petitioners were engaged in any conspiracy as alleged in the show cause notice is on the face of it untenable, as the role of the petitioners is stated to be only as a supplier of the machinery from Germany, and as such it could not be that the petitioners are involved in any activity as alleged.
4. The petitioners have referred to the provisions of Section 1 of the Customs Act to contend that such a show cause notice cannot be issued to the petitioners, as the Commissioner of Customs, being the authority who has issued such show cause notice, completely lacks jurisdiction, as the Act itself would not have any extra-territorial



operation so as to become applicable to the foreign entity in Germany.

5. Mr. Rastogi, learned counsel for the petitioners in support of his contention has brought to our notice that in a similar case where show cause notice was issued to the petitioners by the Commissioner of Customs (NS-V), Jawaharlal Nehru Custom House, Custom Zone-II, Mumbai and to another noticee, namely, M/s. Maruti Knit Tex, the show cause notice against the petitioners was dropped by an Order-in-Original dated 30 December, 2020. It is submitted that in responding to such show cause notice, the petitioners had urged similar contentions as been urged in the present petition that the Commissioner of Customs *inter alia* did not have jurisdiction and hence there was no question of any order levying penalty being passed against the petitioners, which was merely a foreign exporter based in Germany. It was thus urged that the petitioner being situated outside India, there was no question of any penalty being imposed or in such context the show cause notice would be valid. Mr. Rastogi would hence submit that the position in the present proceedings is not different from the proceedings in regard to the show cause notice being dropped against the petitioners vide order dated 30 December, 2020.

6. In the context of the present case, Mr. Rastogi would submit that the petitioners are required to face unwarranted litigation, when the petitioners even remotely are not involved in regard to any allegations as made in the show cause notice. He, therefore, submits that once the authority has acted without jurisdiction in issuing the show cause notice to the petitioner, this Court by applying the well settled principles of law, needs to hold that the show cause notice is void ab initio, illegal, null and void.

7. Having perused the record as also the order passed on a similar show cause notice, we are of the opinion that the authority needs to take a position whether the show cause notice in question against the petitioner on such reasons would be invalid and whether ultimately the show cause notice would attain the same fate as in the case of the show cause notice being dropped against the petitioners by an order dated 30 December, 2020 in case of M/s. Maruti Knit Tex.

8. Learned counsel for the respondent shall take instructions on this issue. If the authority is of the opinion that the case of the petitioners in the present petition are covered by the observations of the authority in the case of M/s. Maruti Knit Tex subject matter of order dated 30 December, 2020, in that case, further adjudication of this petition would not be called for.



9. Let copy of this order be forwarded by the learned counsel for revenue to the concerned authority.

10. Stand over to **24 July, 2023 (H.O.B.)**.”

3. Thereafter, the proceedings were taken up for hearing on 4 September 2023 and being dis-satisfied with the approach on behalf of the department, we passed the following order:-

1. Mr. Ramalingeswara Rao, IRS, who is stated to have given instructions to the learned advocate for the respondent/revenue, a copy of which is placed on record, we are of the clear opinion that either the concerned officer has not understood the purport of our order dated 17 July, 2023 or he is intending to misguide the Court. We, accordingly, direct the officer to remain present before the Court on 11 September, 2023 at 2.30 p.m.
2. Learned counsel for the revenue has also fairly stated that it would be appropriate that the officer himself addresses the Court on this issue.
3. The above directions would not preclude the concerned officer in taking appropriate position as directed by us in paragraph 7 of our order dated 17 July, 2023.
4. Stand over to **11 September, 2023 at 2.30 p.m.**”

4. However, what was observed in the order was completely overlooked when we set down the proceedings to be heard on 11 September 2023, when the Court has passed the following order:-

The State of Affairs is thoroughly disappointing. On 4<sup>th</sup> September 2023, we had passed an order that the officer who was issuing instructions to the learned counsel for Respondent Nos.2 and 3 and who had not given appropriate instructions to Respondent Nos.2 and 3 be called to remain present in the Court which was fairly agreed by the learned counsel for the Revenue when she stated that it would be appropriate that the officer himself addresses the Court.

2. In pursuance of such order, today, Mr. Ramlingeshwar Rao is present in the Court, who stated that he is the Assistant



Commissioner of Customs. Mr. Ramlingeshwar Rao had addressed before us everything, except what the Revenue was called upon to address and as specifically set out in Paragraph Nos.6 and 7 of our order dated 17<sup>th</sup> July 2023.

3. Learned counsel for the Revenue has fairly pointed out that the show cause notice in question and which in our prima-facie, opinion is without jurisdiction, was issued by Deputy Commissioner of Customs, Nhava Sheva-V, Jawaharlal Nehru Customs House, Nhava Sheva, Tal-Uran, District Raigad, Maharashtra by Mr. Shreyansh Mohan, who is stated to be no more occupying the said position. The officer issuing show cause notice is supposed to first ascertain, whether, he has jurisdiction to issue show cause notice. Thus, asking Mr. Ramlingeshwar Rao to give instructions to the learned Advocate for Respondent Nos.2 and 3 was totally incorrect and unjustified. We are also at a loss to understand as to how Mr. Ramlingeshwar Rao can justify the show cause notice issued by his senior officer, Deputy Commissioner of Customs and he is unable to assist the Court in totality. In these circumstances, we would, therefore, require the Deputy Commissioner of Customs, who has issued the impugned notice to justify the said action by placing on record an affidavit. Let such affidavit be placed on record on or before the adjourned date of hearing.

4. Accordingly, stand over to 25 th September 2023, High on Board.

5. Reply affidavit, if any, be served on the Advocate for the Petitioner before 21 st September 2023.”

5. Today when the proceedings are listed before us on the backdrop of such prior orders, Mr.Mishra, learned Counsel appearing for the respondents would submit that in issuing the impugned show cause notice, the department has basically relied on the decision of the learned Single Judge of the CESTAT in the case **Prerna Singh Vs. Commissioner of Customs (Import-II), Mumbai**<sup>1</sup>, hence, the respondents were justified in issuing the show cause notice to a foreign party. Prima facie we are not

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1 2020(372) E.L.T. 610 (Tri. Mumbai)



satisfied with the stand of the department even assuming that the provisions of the amended sub-section (2) of Section 1 of the Customs Act are taken into consideration as applicable to the facts and circumstances in the present case.

6. Accordingly, as purely an issue of law arises for consideration in the present proceedings which goes to the root of the authority and jurisdiction of the designated officer to issue the impugned show cause notices to a foreign entity, we would be required to hear the parties on the merits of their respective contentions, at the final hearing of the petition. Hence, **Rule.** Respondents waive service.

7. In the light of the above discussion and considering the provisions of Section 1(2) of the Customs Act prior to its amendment by Finance Act,2018 (w.e.f. 29.3.2018) as also considering the effect of the said amendment, in our opinion, the petitioners have made out a prima facie case for grant of interim reliefs. Hence, pending the hearing and final disposal of the petitions, the impugned show cause notices shall stand stayed. Ordered accordingly.

8. Liberty to the parties to apply for final hearing after the pleadings are complete.

[JITENDRA JAIN, J.]

[G. S. KULKARNI, J.]