In the High Court of Judicature at Madras

Dated : 11.9.2015

Coram :

The Honourable Mr.Justice V.RAMASUBRAMANIAN

and

The Honourable Mr.Justice T.MATHIVANAN

Civil Miscellaneous Appeal Nos.1914 and 2019 of 2015
and M.P.Nos.1 and 1 of 2015

The Commissioner of Customs
(Sea Port Import), Customs
House, Chennai-1. ...Appellant in both the appeals

Vs

1.The Customs, Excise and Service Tax Appellate Tribunal, South Zone Bench, Shastri Bhavan, Chennai-6.

2.M/s.EL TECE Associates, rep.by its partner Mr.M.Aroikaraj, Chennai-10. ...Respondents in both the appeals

APPEALS under Section 130 of the Customs Act, 1962 against the common final order Nos.40533 and 40534 of 2014 on the file of the first respondent herein dated 25.6.2014.

For Appellant : Mr.K.Mohanamurali

COMMON JUDGMENT
(JUDGMENT WAS DELIVERED BY V.RAMASUBRAMANIAN,J)

These appeals are filed by the Commissioner of Customs, challenging a common order passed by the Customs, Excise and Service Tax Appellate Tribunal setting aside the first order of suspension as well as the order of continuation of suspension.

2. Heard Mr.K.Mohanamurali, learned Standing Counsel for the Revenue.

3. Admittedly, the sequence of events that led to the Customs House Agent going before the Tribunal are as follows :

(i) The offence report was received on 20.12.2012.

(ii) An order of suspension of the Customs House Agent licence was issued on 21.1.2013.

(iii) Personal hearing was granted to the Agent on 30.1.2013.

(iv) An Order in Original was passed on 15.2.2013 directing the continuation of suspension.

(v) The Deputy Commissioner was nominated as the Enquiry Officer by a letter dated 14.3.2013 and

(vi) The Enquiry Officer informed the Customs House Agent by a letter dated 29.3.2014 that the suspension orders may be treated as a show cause notice.

4. It appears that as against the appointment of the Enquiry Officer, the Customs House Agent filed a writ petition in W.P.No.4535 of 2013. The said writ petition was filed on the ground that the time limit for initiating the proceedings had already expired and that therefore, the appointment of the Enquiry Officer was without jurisdiction. However, the said writ petition appears to be pending.

5. In the meantime, the second respondent filed appeals against the original order of suspension as well as the order of continuation of suspension. The Tribunal followed its own decision in Manjunatha Shipping Services Vs. Commissioner of Customs (Imports), Chennai dated 10.10.2013 [Final order No.40461 of 2013], on the scope of Regulations 20 and 22 of the Regulations and also took note of the decision rendered by this Court in W.P.No.8409 of 2013 dated 14.3.2014 and held that after the issue of the suspension order on 21.1.2013 under Regulation 20(2), no show cause notice was issued by the Commissioner under Regulation 22(1). Therefore, following the decision of this Court, the Tribunal allowed the appeals.

6. We do not find any illegality in the common order of the Tribunal. On the admitted facts, it is clear that no show cause notice was issued. However, the Department proceeded to treat the order of suspension itself as a show cause notice on the ground that the same contains the details of allegations. But, this is clearly not in the light of the provisions of the Regulations.

7. We are informed by the learned counsel for the Department that the licence itself is due to expire on 18.11.2015.

8. So far, no proceedings even for revocation have been taken. Therefore, the attempt of the Department to fight over the question of suspension of the licence at this stage is really meaningless.

9. Accordingly, the civil miscellaneous appeals are dismissed. Consequently, the above MPs are also dismissed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

The Customs, Excise and Service Tax Appellate Tribunal, South Zone Bench, Shastri Bhavan, Chennai-6.

+1 cc to Mr.K.Mohanamurali Advocate sr.49678

CMA.Nos.1914 & 2019 of 2015 & MP.Nos.1 & 1 of 2015

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