In the High Court of Judicature at Madras

Reserved on : 17.06.2015

Dated : 02.07.2015

Coram:

The Hon'ble Mr.Justice SATISH K. AGNIHOTRI
and
The Hon'ble Mr.Justice M.VENUGOPAL

W.A.No.371 of 2015
and M.P.No.1 of 2015

1.The Commissioner of Customs (Imports)
Customs House, No.60, Rajaji Salai,
Chennai-600 001.

2.The Inquiry Officer &
Deputy Commissioner of Customs (CHA),
Customs House, No.60, Rajaji Salai,
Chennai-600 001. .. Appellants/ Respondents

Vs.

M/s.A.M.Ahmed & Co.,
rep. by its Managing Partner,
Mr.J.M.Iqbal,
No.205, Linghi Chetty Street,
Chennai-600 001. ... Respondent/Petitioner

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent Act, against the order dated 19.08.2014 made in W.P.No.30884 of 2013 filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorari to call for the records pertaining to impugned Order-in-Original No.2242/2013 dated 11.11.2013 in F.No.R.390/CHA issued by the first respondent and quash the same.

For Appellants : Mr.G.Rajagopalan
Additional Solicitor General of India
Asst. by Mr.V.Sundareswaran

For Respondent : Mr.T.Mohan
for Mr.Hari Radhakrishnan

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J U D G M E N T

[Judgment of the Court was made by
M.VENUGOPAL, J.]

The Appellants/Respondents have preferred the instant Writ Appeal as against the Order dated 19.08.2014 in W.P.No.30884 of 2013 passed by the Learned Single Judge.

2.The Learned Single Judge while passing the Impugned Order in W.P.No.30884 of 2013 on 19.08.2014 in Paragraph Nos. 25 to 28 had observed the following and resultantly allowed the Writ Petition without costs by setting aside the Impugned Order.

> "25. In the case on hand, it is not the contention of the respondents that the time limit prescribed in Regulation 22(1) is only directory and not mandatory. It is not even the contention f the respondents that the time limit prescribed in Regulation 22(1) need not be strictly adhered to. On the question that the first respondent is duty bound to initiate proceedings within 90 days from the date of receipt of offence report, there are no two opinions, at least before me. Therefore, the decision of the Division Bench of the Delhi High Court is of no assistance to the respondents. Hence the first contention is to be upheld.
>
> CONTENTION 2:
>
> 26. The second contention of the petitioner is that the importer got the dispute settled in terms of Section 127(B) of the Customs Act 1962 with the Settlement Commission. Paragraph 6.2 of the order of the Settlement Commission, relied upon by the petitioner in his affidavit reads as follows:-
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> "The Bench observes that the applicant has made a true and full disclosure of all the facts relating to the imported goods. Besides, he has also submitted details of post importation services/repairs undertaken by him and expenditure incurred on servicing, supply of spare parts, incidental charges, etc., which were not included in the original import value of the goods. The remittances were also made by him including service charges from India to Singapore through banking channels. His remittance transactions are thus licit transactions."

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Therefore, it is contended that when the importer has now got a clean chit from the settlement Commission, the petitioner who is only a Broker, cannot be penalised.

27. In paragraphs 25 and 26 of the Impugned Order, the first respondent has dealt with this aspect. The first respondent has rejected this contention on the ground that the Settlement Commission settled the case upon confirmation of additional amount of Customs Duty, interest and nominal fine and penalty based upon the true and the full disclosure. Therefore, the first respondent has concluded that the importer was guilty of undervaluation and that consequently, the petitioner cannot escape liability.

28. But, what the first respondent has failed to take note of, is the fact that the revocation of licence now ordered by the first respondent, throws the petitioner out of business once and for all and deprives them of their very livelihood. Once the importer has escaped with a nominal fine on the ground that a true and full disclosure had been made, it would be unfair to impose the extreme penalty upon the petitioner. Therefore, the petitioner is entitled to succeed on both grounds....."

3. The Learned Additional Solicitor General of India appearing for the Appellants/Respondents submits that the Impugned Order of the Learned Single Judge in allowing the Writ Petition in W.P.No.30884 of 2013 is contrary to law and opposed to the facts and circumstances of the present case.

4.The Learned Additional Solicitor General for the Appellants urges before this Court that the Learned Single Judge had failed to appreciate that when it is admitted at Para 14 of the Impugned Order passed in the Writ Petition that there was dispute of two things viz., (i) As to what an offence report is; and (ii) As to how to calculate the period of 90 days in Regulation 22(1) and in this regard committed an error in venturing into factual adjudication of facts and merits of the case instead of directing the Respondent/Petitioner to take recourse to the remedy provided under the Customs Act, 1962.

5.It is represented on behalf of the Appellants that the Learned Single Judge ought not to have totally ignored the Law that this Court in W.P.(MD) No.496 of 2013 dated 10.10.2013 had specifically directed to complete the proceedings under Regulation

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22 of CHALR, 2004.

6.The Learned Additional Solicitor General for the Appellants proceeds to project an argument that the Learned Single Judge should have seen that the "Customs Act", 1962 and the Customs House Agents License Regulation, 2004 operates on two different areas, the former for 'Levy and Collection of Duties' being a plenary legislation and the latter for 'Regulating the Licenses' issued to the Customs House Agents by the Central Board Excise and the Customs under the "Delegated Legislation" and hence forth shall not be read into one another.

7.According to the Learned Additional Solicitor General of India for the Appellants, the Learned Single Judge had erred in concluding at Paragraph No.25 that the Appellants had not raised the plea that the time limit prescribed under Rule 22 of CHALR, 2004 is only Directory and not Mandatory ignoring the specific plea raised at Paragraph No. 17 of the Counter Affidavit filed by the Appellants.

8.The Learned Additional Solicitor General of India for the Appellants contends that the Learned Single Judge had failed to appreciate the Law that the action taken by the 1st Appellant/Commissioner of Customs, Tuticorin in issuing Show Cause Notice dated 18.05.2010 followed by the Order-in-Original dated 31.01.2011 issued to importer M/s I-Tech Imports and Exports, Chennai under the Customs Act, 1962 imposing penalty under Section 112(a) under Section 114AA as an Adjudicating Authority appointed under the Customs Act, 1962 and not as a 'Recovery Authority' under the CHALR, 2004.

9.The Learned Additional Solicitor General of India for the Appellants submits that the Learned Single Judge had failed to appreciate that the action initiated by the Appellant as a 'Regulation Authority' under Regulation 13(b), 13(d), 13(e) of CHALR, 2004 dated 12.11.2012 was perfectly justified within a period of limitation being in accordance with the CHALR, 2004 which should not have been quashed.

10.The Learned Additional Solicitor General of India for the Appellants strenuously contends that the Learned Single Judge ignored the Law that when the Regulation 22(1) of the CHALR, 2004 specifically employs the word "within 90 days from the date of receipt of offence report" distinctives which by necessary implication does not apply to the proceedings followed under the Customs, Act, 1962, but, only refers to the proceedings under the

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CHALR, 2004.

11.On behalf of the Appellants, it is brought to the notice of this Court that the Learned Single Judge had committed an error in concluding at para 20 of the Order dated 19.08.2014 that Show Cause Notice dated 08.05.2010 should be reckoned as the date of receipt of 'Offence Report' under Regulation 22(1) for initiating action against the Respondent.

12.The prime contention advanced on behalf of the Appellants is that the Learned Single Judge fell into an error in interpreting the settlement of Disputes Order issued under Section 127B to the Importer M/s I-Tech Imports and Exports by the Settlement Commission upon payment of Additional Customs Duty, Fine, Interest and Penalty supports the case of the Respondent. Moreover, the Settlement Commission is approached by way of application when there is a violation of statutory provisions of Customs Act, 1962 involving evasion of duty, consequently, the order of Settlement Commission was not sacrosanct to infer that the action of Respondent is immune from CHALR, 2004.

13.Lastly, it is the stand of the Appellants that the Learned Single Judge ignored the Law that order of Settlement Commission passed in the case of Importer M/s I.Tech Imports and Exports relates to the immunity from prosecution subject to the payment of additional customs duty, fine, interest and penalty and proceedings regulating the Licence issued under CHALR, 2004.

14.The Learned Additional Solicitor General of India for the Appellants brings it to the notice of this Court that the Respondent/Petitioner is Licensed Custom House Agent possessing License No.R.390 (PAN AAAFA1151A) having validity up to 31.12.2016 issued by the Chennai Customs under Regulation 9(1) of the Customs House Agents Licensing Regulations, 2004, referred to as "CHALR, 2004" framed under Section 146 of the Customs Act, 1962. In fact, the Respondent/Petitioner was operating at Tuticorin Customs Station upon 'C' Form intimation.

15.The Learned Additional Solicitor General of India for the Appellants draws the attention of this Court to the fact that the Directorate of Revenue Intelligence (DRI) through the letter dated 05.12 had informed the Tuticorin Customs that the Respondent/Petitioner had filled a Bill of Entry No.473263 dated 16.11.2009 on behalf of their client M/s I-Tech Imports and Exports for the import of goods declared as plastic injection moulding

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machineries. Further, from the DRI Report, it came to light that the country of origin was mis-declared to evade of Anti Dumping Duty as per Notification No.47/2009 (CUS) dated 12.05.2009 and also undervalued the machineries imported.

16.Continuing further, it was evident from the DRI report that the importer filed the Bill of Entry declaring the lower value and sold the goods for a higher value. The Petitioner/Respondent had on earlier occasion projected four Bills of Entry prior to this and which was taken up for investigation by the DRI, Chennai.

17.It comes to be known that the DRI issued Show Cause Notice dated 18.05.2010 requiring the Respondent/Petitioner to show cause to the Additional Commissioner of Customs, Tuticorin to file a reply within 30 days as to why the penalty should not be imposed on him under Section 112 (a) and 114 A of the Customs Act, 162 for acts of commission and omission. The Respondent/Petitioner was heard in person and considering the reply filed by it, Additional Commissioner of Customs, Tuticorin levied a penalty of Rs.1,00,000/- under Section 112(a) and Rs.2,00,000/- under Section 114AA of the Customs Act, 1962 to it through Order dated 31.01.2011 and in fact an Appeal was filed by the Respondent /Petitioner against the said order and now further Appeal is pending before the 2nd Appellate Authority, namely, CESTAT, Chennai.

18. It is be noted that the show cause notice dated 12.11.2012 was issued to the Respondent/Petitioner by the 1st Appellant/ Commissioner of Customs (Imports) Chennai under Regulation 22 of CHALR, 2004 requiring the Petitioner to file its reply within a period of thirty days as to why the license granted to it shall not be revoked and the security deposit was not to be forfeited and the deputy Commissioner of Customs was appointed as an Inquiry Officer. Indeed, Show Cause Notice was issued to the Respondent/Petitioner within 90 days from the date of receipt of 'offence report' from the Commissioner of Customs, Tuticorin.

19.In the course of enquiry, a personal hearing was granted to the Respondent/Petitioner on 14.03.2013 and ultimately, the Inquiry Officer after completion of enquiry submitted his report on 29.05.2013. The Inquiry Officer has sustained all the charges of violation of Regulation 13(b), 13(d) and 13(e) of the CHALR, 2004 made against the Customs Broker/ Writ Petitioner in the Show Cause Notice dated 12.11.2012. The report of the Inquiry Officer was forwarded to the Respondent/Petitioner through the letter dated 13.06.2013 and a reply was filed by the Respondent/Petitioner dated 19.06.2013.

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20.Apart from the above, one more opportunity of personal hearing was granted to the Respondent/Petitioner requiring him to appear on 04.11.2013 before the Commissioner of Customs (Imports) and the same was informed to it as well as its Counsel who was appearing in the enquiry proceedings, but, the Respondent/Petitioner had not appeared for the personal hearing and its Learned Counsel filed a letter dated 04.11.2013 that the notice was served on that day and he was having an hearing in 'CESTAT' and Madras High Court and further mentioned that the 1st Appellant/1st Respondent had no jurisdiction to proceed with the matter and sought for reply to its earlier Letter dated 19.06.2013 before fixing a date for hearing.

21.The Commissioner of Customs (Imports) finally passed an Order on 11.11.2013 Order-in-Original No.2242/2013 revoking the license issued to the Respondent/Petitioner and forfeited the 'Security Deposit', but, the documents already filed by the Respondent/Petitioner before the Department was allowed to be cleared.

22.The prime stand of the Appellants is that the Writ Petition filed by the Respondent/Petitioner is not perse maintainable because of the reason that as against the Impugned Order revoking license granted to the Customs House Agent, Appeal is provided under Section 129A (1) of the Customs Act, 1962, which lies to the Customs, Excise and Service Tax Appellate Tribunal within 90 days from the date of receipt of copy of the Order.

23.In as much as a viable effective and alternative remedy of preferring an 'Appeal' is available to the Respondent/Petitioner before the Tribunal concerned, the Writ Petition filed by the Respondent/Petitioner is not maintainable, according to the Appellants.

24.Besides the above, as against the Order passed by the Additional Commissioner of Customs, Tuticorin, the Respondent/Petitioner filed a Statutory 'Appeal' and in 'Appeal' penalty amount was reduced. Further, an Appeal was filed and it is pending before the 'CESTAT', Chennai. In short, the plea taken on behalf of the Appellants is that the 2nd Respondent/Petitioner had approached the Appellate Authority as against the Order of Penalty imposed by the Additional Commissioner of Customs, Tuticorin and in respect of the order revoking license passed for the same offence and therefore, the Respondent/Petitioner has to approach the

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Appellate Authority. Viewed on that basis, it is contended on behalf of the Appellants that the Writ Petition filed by the Respondent/Petitioner is not maintainable in law.

25.The Learned Additional Solicitor General of India for the Appellants submits that in compliance with the Order dated 10.10.2013 in W.P. (MD) No.496 of 2013 passed by this Court, the Impugned Order in the subject matter in issue was passed on 11.11.2013, within one month and when the Licensing Authority was directed to finish the enquiry within one month and the same was complied with by the Department, and therefore, the Respondent/Petitioner is precluded from challenging the Impugned Order on the ground of delay.

26.The Learned Additional Solicitor General of India for the Appellants contends that since the Respondent/Petitioner was granted License by the Chennai Customs and where it operates as per guidelines issued by the Board through its Circular No. 09/2010 dated 08.4.2010. The Commissioner of Customs, Tuticorin through Letter dated 06.09.2012 forwarded the case to the 1st Appellant/Commissioner of Customs, Chennai, the Licensing Authority to initiate further action against the Customs Broker for revocation of License under Regulation 22 along with his report and enclosure of documents. Only, on the basis of the report issued by the Commissioner of Customs, Tuticorin, Show Cause Notice dated 12.11.2012 was issued to the said Customs Broker by the 1st Appellant Commissioner of Customs, (Imports), Chennai under Regulation 22 of the CHALR, 2004 and thus, the Show Cause Notice was issued within 90 days from the date of receipt of report from the Commissioner of Customs, Tuticorin. As such, the ingredients of Regulation 22(1) of CHALR was not violated in the present case.

27.The Learned Additional Solicitor General of India for the Appellants contends that the Commissioner of Customs had given personal hearing on 04.11.2013, which was an extended opportunity, but, the Respondent/Petitioner failed to avail the same. Also that, while responding to the personal hearing notice, the counsel for the Respondent/Petitioner had given a reply stating that the proceedings were time barred as it was not complied within 90 days and therefore sought for a reply for his earlier letters. Hence there was no violation of principles of natural justice in the present case. Added further, the remainder was issued by the Respondent/Petitioner on 11.11.2013 and on that date already the impugned order was passed and therefore it may not be considered.

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28.As a matter of fact, the Respondent / Petitioner, who called for several reports and prayed for opportunity to cross-examine the witness was provided with everything and as such, there were no violation of principles of Natural Justice.

29. The Learned Additional Solicitor General of India places heavy reliance on the 1st Appellant's proceedings bearing C.No.VIII/13/18/2001-CHAL dated 06.09.2012 whereby and whereunder the copies relied upon documents were forwarded for taking action under Regulation 22 of CHALR, 2004.

30. Infact, in the said communication in Paragraph Nos.2.03 to 0.7 it is observed as under:-

> " 2.03. Further, perusal of Page Nos.18 & 19 of the e-mail print out submitted by Shir.Anthonysamy, vide his statement dated 01.12.2009 revealed that the proforma invoice with reference to invoice no.051009 dated 07.10.2009 showed M/s esteem Industries, Koothambakkam as the consignee for the two used machines viz. Toshiba 550E and Kawaguchi 650 B for a value of Rs.95850 SGD. The buyer M/s Esteem Industries had paid an amount of Rs.3.47 lakhs to the CHA, for the said import, towards duty and clearance charges as admitted vide his statement dated 22.01.2010 which is also corroborated by documents seized from M/s Esteem Industries. The CHA, M/s A.M.Ahamed & Co., Tutucorin knowingly had filed the Bill of Entry with invoices showing a lesser value of SGD 28500 despite having the knowledge of another invoice showing the actual value of SGD 95850, causing loss of revenue to the Government. An e-mail was sent to ganesh@ahamed.com from "itechcnc@gmail.com" on 11.11.2009, enclosing a copy of proforma invoice no.051009 dated 07.10.2009 for SGD 95850 pertaining to the import of goods whereas invoice no.051009 dated 07.10.2009 for SGD 95850 pertaining to the import of goods whereas invoice no.280809 dated 02.11.2009 for SGD 28500 was presented to the Customs Department for assessment under the Bill of Entry No.473263 dated 16.11.2009 by the CHA.
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> 03. Similarly, it is seen from the show cause notice F.No.VIII/13/18/2001-CHAL dated .05.2010 issued to the importer and CHA that on earlier occasions, the CHA had filed the following Bills of Entry, on behalf of the above importer, and imported machineries by declaring low value as detailed below:-

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Sl.	B.E. No. & Date	Value declared	Actual value	Value suppressed
1.	762158 dt. 09.06.08	USD 23190	USD 42190	USD 19000
2.	882350 dt. 04.11.08	USD 18600	USD 38649	USD 20649
3.	290911 dt. 20.08.09	SGD 28600	SGD 43600	SGD 15000
4.	468437 dt. 07.09.09	SGD 12250	SGD 27250	SGD 15000

In the above cases also the importer transferred the declared value of the machineries to the Importer's own account in Singapore through Bank of India in Form A1 and the suppressed value had been transferred to the above account in Singapore, through Bank of India, in Form A2 as technical charges. Also the CHA had declared lesser value in the above Bills of Entry despite having knowledge of actual value. The total differential duty demanded, with regard to five Bills of Entry worked out to Rs.10.88 Lakhs, which was later paid by the importer as per the Settlement Commission's order No.13/2010 dated 30.11.2010.

04. Statements recorded from Shri.Anthonysamy, Marketing Manager of the importer company M/s I-Tec Imports & Exports, Chennai Shri. Shri. Devan, Proprietor of M/s. I-Tec Imports & Exports, Chennai, Shri.Ganesh, H-Card holder of the CHA and Shri.J.Muruganantham, Proprietor of M/s. Esteem Industries, Chennai proved the role of CHA in filing manipulated invoices for assessment.

05.Therefore, it appears that the CHA has failed to comply with the Regulation 13 of CHALR, 2004 and it is felt that it is a fit case to initiate suspension/revocation actions in terms of Regulations 20 (2) and 22 of CHALR, 2004.

06. As per Board's circular no.09/2010 Cus. Dated 08.04.2010 the Commissioner of Customs at a customs station who had authorised a CHA to operate an Form C intimation should inform the details of violations to the Commissioner of Customs at the Customs Station from where the CHA licence was issued for such CHA so that necessary action for suspension/revocation of CHA licence could be initiated against him. A copy of order of prohibition of operation of CHA licence under the provisions of Regulation 21 of CHALR, 2004 in Tuticorin Customs

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Commissionerate issued by the undersigned is also enclosed.

07. Accordingly the following relied upon documents are sent herewith for taking further necessary action against the CHA.

(i) Copy of show cause notice issued by the Additional Director, DRI, Chennai in F.No.VIII/48/39/2009-DRI CZU dated .06.2010.

(ii) Copy of O-I-O No.02/11 dated 31.01.2011 passed by the Additional Commissioner of Customs, Custom House, Tuticorin.

(iii) Statement dated 27.11.09 and 01.12.09 of Shri Anthonysamy, Marketing Manager of M/s I.Tec.Imports & Exports, Chennai.

(iv) Statement dated 04.12.09 of Shri.Devan, Proprietor of M/s I-Tec Imports & Exports, Chennai.

(v) Statement dated 22.01.2010 of Shri J.Muruganantham, Proprietor of M/s Esteem Industries, Chennai.

(vi) Statement dated 07.05.2010 of Shri Ganesh, H-Card holder of the CHA, M/s A.M. Ahamed & Co, Chennai" .

31.At this juncture, this Court very relevantly points out that the "Customs House Agents Licensing Regulations, 2004" (CHALR, 2004) does not deal with the term 'offence report' anywhere but only in Regulation 22(1). Indeed, the Regulation, 20(1) of CHALR, 2004 speaks of 'Suspension of Revocation of License'. Even this 'Regulation' is silent as to the term 'offence report'.

32. In this connection, it is worthwhile for this Court to extract the Regulation 20: 'Suspension of Revocation of Licence' which runs as follows:-

(a) failure of the Customs House Agent to comply with any of the conditions of the bond executed by him under regulation 10;

(b) failure of the Customs House Agent to comply with any of the provisions of these regulations, within the jurisdiction of the said Commissioner of Customs or anywhere else;

(c) any misconduct on his part, whether within the jurisdiction of the said Commissioner of Customs or any where else which in the opinion of the Commissioner renders him unfit to transact any business in the Customs

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Station.

(2) Notwithstanding anything contained in sub-regulation (1), the Commissioner of Customs may, in appropriate cases where immediate action is necessary, [within fifteen days from the date of receipt of a report from investigating authority, suspend the licence] of a Customs House Agent where an enquiry against such agent is pending or contemplated.

(3) Where a licence is suspended under sub-regulation (2), notwithstanding the procedure specified under regulation 22, the Commissioner of Customs may, within fifteen days from the date of such suspension, give an opportunity of hearing to the Customs House Agent whose licence is suspended and may pass such order as he deems fit either revoking the suspension or continuing it, as the case may be, within fifteen days from the date of hearing granted to the Customs House Agent].

33.Furthermore, the Regulations CHALR, 2004 does not spell out what is an 'offence report' and the manner in which it is to be sent and the appropriate / Competent Authority to send the same. Added further, the Regulation 22 of the CHALR, 2004 speaks of 'Procedure for Suspending or Revoking License under Regulation 20' and in appropriate cases, the Regulation 20(2) of CHALR, 2004 empowers the Commissioner of Customs to Suspend the License of an Agent in appropriate cases where immediate action is necessary. It cannot be gainsaid that Rule 22(3) specifies a time limit of 15 days. Further, it also determines the time limit enjoined under Regulation 22(5).

34.In the present case before this Court, the stand of the Appellants is that the Respondent/Petitioner was granted license by the Chennai Customs and they were operating in Tutucorin Customs. But the clear cut case of the Appellants/Respondents is that the Commissioner of Customs, Tuticorin had forwarded the case of the Respondent/Petitioner to the 1st Appellant/ Commissioner of Customs at Chennai only by means of a letter dated 06.09.2012 and based on that a Show Cause Notice was issued on 12.11.2012 within a prescribed period of 90 days Sub-Regulation 1 of Regulations 22.

35.However, the significant aspect of the matter is that the Appellants in the Counter Affidavit filed in the Writ Petition had denied the averments of the Respondent/Petitioner on the ground no.6 of Paragraph No.16 to the effect that the Show Cause Notice dated 18.05.2010 was issued by the Directorate of Revenue and Intelligence and the Order-in-Original dated 31.01.2011 passed by

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the Additional Commissioner, Tuticorin were all marked to the Chennai Commissionerate and that it can safely be concluded that the said Commissionerate had knowledge about it.

36.Coming to the aspect of the issuance of the Show Cause Notice to the Respondent/Petitioner dated 18.05.2010 with a copy being marked to the 1st Respondent, in the absence of what is meant by 'offence report' one can conveniently and safely take the Show Cause Notice dated 18.05.2010, as the date of receipt of 'offence report'. Viewed in that perspective, the period of 90 days ought to commence from that date in the considered opinion of this Court.

37.In so far as the Appellants are concerned, they fall back upon a Circular No.9/2010-Customs in F.No.502/5/2008-Cus.VI, Government of India, Ministry of Finance, Department of Revenue issued by the Central Board of Excise and Customs dated 08.04.2010 wherein in Paragraph No.5, it deals with 'Suspension of Revocation against CHAs operating on 'C' Form intimation basis', for fuller and better appreciation of the subject matter in issue, the Paragraph No.5.2 is quoted as under:-

> "Further, it is also clarified that the Commissioner of Customs at a customs station who had authorised a CHA to operate on 'C' Form intimation, should inform the details of violations to the Commissioner of Customs at the customs station from where the CHA licence was issued for such CHA, so that necessary action for suspension or revocation of CHA licence was issued for such CHA, so that necessary action for suspension or revocation of CHA licence, could be initiated by him. This would avoid duplication and ensure uniformity in adjudication of a case against a CHA in suspension or revocation proceedings by the Customs field formations. However, the Commissioner of Customs, who had authorised a CHA to operate on 'C' form intimation at a customs station, may take action in deserving cases under regulation 21 of CHALR, 2004 for prohibiting the working of such defaulting CHA in any section of the Custom House/Customs Station".

38.It transpires that the 1st Appellant/1st Respondent had received the Show Cause Notice dated 18.05.2010 which can be construed as a Notice. Besides this, 1st Appellant/1st Respondent was in receipt of Original Order dated 31.01.2011. At this stage, this Court significantly points out that the Respondent/Petitioner in the Writ Petition had categorically averred that the 1st Appellant/1st Respondent had received the Show cause Notice as well as the Order-in-Original. As such, the Show Cause Notice should

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have been issued within 90 days. In short, the 1st Appellant/1st Respondent is without any haziness is to commence the proceedings within 90 days from the date of receipt of 'offence report' , as opined by this Court.

39.The emphatic plea taken on the side of the Respondent/Petitioner is that the 'Importer' had settled the dispute in terms of ingredients of Section 27(b) of the Customs Act, 1962 with the Settlement Commission. In reality, the Settlement Commission on 30.11.2010 passed a final order no.13/2010 – cus and the findings in Paragraph No.6.2 and Paragraph No.6.3 had observed the following and ultimately held that the Respondent/Petitioner was eligible appropriate immunity from penalty and fine and prosecution :-

> " 6.2 The Bench observes that the applicant has made true and full disclosure of all the facts relating to imported goods. Besides, he has also submitted details of post importation services/repair undertaken by him and expenditure incurred on servicing, supply of spare parts, incidental charges, etc., which were not included in the original import value of the goods. The remittances were also made by him including service charges from India to Singapore through banking channels. His remittance transactions are thus licit transactions.
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> 6.3. Bench further observes that the applicant has made a prima facie case to the effect that they incurred expenditure on imported goods supplied by them to customers after clearance from customs. However, it is difficult to quantify the exact amount of charges said to have been incurred toward servicing, supply of spare parts, incidental charges etc., after importation which could be considered for deductions out of the remittances made by them. There is no dispute that payments have been made over and above the amounts mentioned in respective invoices filed by the applicant at the time of clearance of imported goods which has been fully accepted by the applicant."

40.It is to be borne in mind that Section 127-H of the Customs Act, 1962 confers power on the Settlement Commission to grant immunity from prosecution - for any offence under this Act or the Indian Penal Code (45 of 1860) or under any other Central Act for the time being in force and such immunity may be either in whole or in part from the imposition of a penalty, fine and interest under the Customs act, 1962, in regard to the case covered by the Settlement.

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41.Suffice it for this Court to point out that granting immunity is itself within the domain and subjective discretion of the Settlement Commission depending upon various factors mentioned in Section 127-H of the Customs Act, 1962.

42.To put it precisely, the offence discussed in Section 127-H of the Act means an offence pertaining to the case, covered by the Settlement. Even the power 'Waiver' is expressly conferred by Legislative to the Settlement Commission. Furthermore, as per Section 127-J of the Customs Act, 1962, 'every order' of settlement passed under Sub-Section 5 of Section 127-C shall be conclusive as to the matters stated therein and no matter covered by such order shall save as otherwise provided in this chapter (Chapter, 14-A) be reopened in any proceeding under this Act or under any other law for the time being in force. Also it cannot be forgotten that as per Section 127-M of the Customs Act, 1962 the proceedings before the Settlement Commission shall be deemed to be judicial proceedings within the meaning of Sections 193 and 228 and for the purposes of Section 196 of Indian Penal Code (45 of 1860).

43.It is to be noted that the 1st Appellant /1st Respondent had turned down the settled case upon confirmation of an additional amount of Customs Duty 'Interest' and 'Nominal Fine' and 'Penalty' based on a true and full disclosure made by the 'Importer' before the Settlement Commission, who in his disclosure had completely accepted the duty liability as fixed by the Department. In that view of the matter, the Settlement Commission had concluded that the Importer was guilty of under valuation etc., and resultantly the Respondent/Petitioner could not escape from the clutches of liability.

44. In the instant case, there is no two opinion of the fact that the importer was guilty of under valuation etc., and he was let out with the nominal fine, but the punishment of revocation its license and the forfeiture of security deposit of the Respondent/Petitioner, in the considered opinion of this Court is the excessive, arbitrary and capricious one. When the importer had escaped liability and when its case was concluded by the Settlement Commissioner, the Respondent/Petitioner is also to reap similar benefits in the considered opinion of this Court.

45.As a matter of fact, there cannot be any discrimination in any form or manner because of the prime reason that 'equality' before Law is a positive one. Furthermore the principle of equal treatment pre-supposes an existence of similar legal foot hold.

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Article 14 of the Constitution is a genus and if some benefits are given to certain individuals, then, persons, who are similarly placed/situated are also to be conferred with the same benefits and to be treated in equal manner. Also, it is to be taken note of that if certain persons are alone showered with one kind of benefits, then, it will kindle Homo Sapiens to recall and recollect the quotation of George Orwellian, who aptly said "All are equal but some are more equal than others".

46.Viewed in that angle, this Court comes to an inescapable and resultant conclusion that the Learned Single Judge had rightly allowed the Writ Petition filed by the Respondent / Petitioner and in short, the impugned order passed by the Learned Single Judge in the Writ Petition No.30884 of 2013 dated 19.08.2014 is free from any flaw. Consequently, the Writ Appeal fails.

In the fine, the Writ Appeal is dismissed and the connected Miscellaneous Petition is closed.

Sd/-
Asst. Registrar

/true copy/

Sub Asst. Registrar.

ssd

To
1.The Commissioner of Customs (Imports)
Customs House, No.60, Rajaji Salai,
Chennai-600 001.

2.The Inquiry Officer &
Deputy Commissioner of Customs (CHA),
Customs House, No.60, Rajaji Salai,
Chennai-600 001.

+1cc to Mr.V.Sundareswaran,Advocate SR.No.32871
+1cc to Mr.Hari Radhakrishnan, Advocate SR.No.3267

W.A.No.371 of 2015

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