IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 25.8.2015.

CORAM

THE HON'BLE MR.JUSTICE V.RAMASUBRAMANIAN
AND
THE HON'BLE MR.JUSTICE T.MATHIVANAN

C.M.A.No.349 of 2015
and
M.P.No.1 of 2015

The Commissioner of Customs
(Sea Port Import),
Customs House,
No.60, Rajaji Salai,
Chennai 600 001. Appellant

vs.

1. The Customs Excise and Service
   Tax Appellate Tribunal,
   South Zone Bench,
   Shastri Bhavan Annex 1st Floor,
   26, Haddows Road, Chennai 600 006.

2. M/s.SASS Global Logistics,
   New No.29, First Narayanan Street,
   Seven Wells,
   Chennai 600 001. Respondents

Civil Miscellaneous Appeal against the order dated 18.6.2014 in Common Final Order No.40512 of 2014 on the file of the Central Excise and Service Tax Appellate Tribunal, Chennai Bench, Chennai.

For appellant : Mr.K.Mohanamurali,
Senior Panel Counsel
R1 : Tribunal

For R2 : Mr.P.Saravanan

JUDGMENT

(Judgment of the Court was delivered by V.RAMASUBRAMANIAN, J.)

The Revenue has come up with the above appeal under Section 130 of the Customs Act, 1962, questioning the correctness of an order passed by the CESTAT setting aside the order of suspension of Customs House Agent Licence.

2. Heard Mr.K.Mohanamurali, learned Senior Panel Counsel for the petitioner and Mr.P.Saravanan, learned counsel for the second respondent.

3. The respondent is operating with CHA licence issued under the provisions of the Customs House Agents Licence Regulations 2004 framed under section 146 of the Customs Act, 1962. On the ground that an offence report in terms of section 13 of the Regulations dated 16.10.2012 was received on 18.10.2012, the Commissioner of Customs passed an order on 30.10.2012 suspending the CHA licence of the respondent with immediate effect. For the purpose of granting opportunity of personal hearing, the Commissioner fixed the date as 8.11.2012. It was, later, adjourned to 11.12.2012.

4. By a further order dated 26.12.2012 passed under Regulation 20(3), the suspension was continued. Aggrieved by the orders of suspension, the respondent filed an appeal before the CESTAT. When the appeal was pending before the CESTAT, the appellant issued an order dated 27.2.2013 appointing an enquiry officer. The order of appointment of the enquiry officer was challenged by the respondent in W.P.No.8409 of 2013, on the ground that without even issuing show cause notice, within the period of limitation, an enquiry officer had, straightway, been appointed. It was also the contention of the respondent that even the order of appointment of the enquiry officer was beyond the period of limitation.

5. Both the grounds of challenge were upheld by the learned Judge, by an order dated 14.3.2014 and the order of appointment of the enquiry officer was set aside by the learned Judge.

6. The Revenue has filed an appeal in W.A.No.1719 of 2014 as against the said order of the learned Judge. In the appeal, a Division Bench of this court has granted a stay on 9.1.2015.

7. In the meantime, the appeal filed by the respondent before the CESTAT as against the order of suspension came up for hearing and by a final order dated 18.6.2014, the CESTAT allowed the appeal and set aside the order of suspension. Of course, the order was passed on the basis of a judgment of the learned Judge quashing the appointment of the enquiry officer. Therefore, armed with the admission of a writ appeal and the initial stay granted by the Division Bench (survival of which is seriously questioned by both parties), the Revenue has come up with this appeal as against the order of the CESTAT.

8. From the facts narrated above, it will be clear that in this appeal, we are concerned only with the validity of the order of suspension. The order of suspension is challenged on two grounds viz., (a) that no show cause notice was issued within the period of limitation prescribed under the Regulations and (b) even the

appointment of the enquiry officer was beyond the period of limitation.

9. A Division Bench of this court has held in COMMISSIONER OF CUSTOMS (SEA PORT IMPORT), CHENNAI v. CESTAT, CHENNAI (2014(310) ELT 673) that the compliance of the procedure under Regulation 20 would not, automatically, tantamount to the compliance of the procedure prescribed under Regulation 22. In this case, even till date, no show case notice has been issued as required by the Regulations. However, Mr.N.Mohanamurali, learned Senior Panel Counsel for the Revenue contended that both in the original order of suspension dated 30.10.2012 and in the order of continuation of suspension dated 26.12.2012, the charges against the respondent have been made amply clear and that the respondent also had also been furnished with necessary documents. In other words, the bare fact that no independent show cause notice was issued, is not disputed by the learned Senior Panel Counsel.

10. What the learned Senior Counsel wants to do is to read the show cause notice into the original order of suspension and the order of continuation of suspension. We are afraid that we cannot do that. The objection of the order of suspension is completely different from the object of issuance of the show cause notice. The Regulations in this regard are very clear. Under the sub-regulation (2) of Regulation 20, a time limit of 15 days is fixed for suspending the licence from the date of receipt of a report. Under sub-regulation (3), an opportunity of hearing should be granted to the licensee within 15 days from the date of suspension. This opportunity is only in respect of suspension. The Regulation 20 also deals only with suspension.

11. The procedure for revoking the licence is separately prescribed under Regulation 22. Under sub-regulation (1) of Regulation 22, a notice should be issued within 90 days from the date of receipt of offence report, indicating the grounds on which it was proposed to suspend or revoke the licence.

12. The Department appears to have taken advantage of the expressions 'suspension' appearing under Regulation 20 as well as Regulation 22. The power to order suspension under Regulation 20 is in cases where further proceedings are sought to be initiated. The suspension contemplated under Regulation 22 is by way of penalty after the enquiry. The distinction between two Regulations is that one is a suspension pending enquiry and the other is a suspension by way of penalty.

13. We cannot read a show cause notice into an order of suspension passed under Regulation 20. Therefore, the Tribunal was right, though on a different ground, in coming to the conclusion that it arrived at. Hence, the question of law raised by the appellant viz., whether the Honourable CESTAT's final order No.40512/2014 dated

18.6.2014 was correct when the Department has substantially complied with the Regulation 22(1) of CHALR, 2004 by way of issuing with Order of Suspension wherein the violations of the provisions of CHALR 2004 were elaborately brought out, by giving an opportunity of personal hearing when the Customs Broker attended the same and submitted his averments, and finally by issuing with a detailed order passed by the Commissioner (Import) continuing the suspension already made, is answered against the Revenue. The civil miscellaneous appeal is dismissed. No costs. The connected miscellaneous petition is also dismissed.

-s/d-
Assistant Registrar(CSII)
dt:5/10/2015

True Copy

Sub-Assistant Registrar

ssk.

To

1. Central Excise and Service Tax
   Appellate Tribunal,
   Chennai Bench, Chennai.

2. The Customs Excise and Service
   Tax Appellate Tribunal,
   South Zone Bench,
   Shastri Bhavan Annex 1st Floor,
   26, Haddows Road, Chennai 600 006.

3. M/s.SASS Global Logistics,
   New No.29, First Narayanan Street,
   Seven Wells,
   Chennai 600 001.

+1 cc to Mr.K.Mohanamurali Advocate sr.45022
+1 cc to Mr.P.Saravanan, Advocate sr.45250

aa06/10/2015