

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.04.2015

CORAM:

The Honourable Mr. Justice S.VAIDYANATHAN

Writ Petition Nos.27726 & 27727 of 2014

And M.P.Nos.1 and 1 of 2014

Reserved on 19.03.2015

M/s.Mars Shipping Services,
259, Thambu Chetty Street,
3rd Floor, Chennai-600 001,
Rep. by its Partner R.Suresh Krishnan

...Petitioner in both
Writ Petitions

-Vs-

The Commissioner of Customs (Seaport-Import),
Custom House,
60, Rajaji Salai,
Chennai-600 001.

...Respondent in both
Writ Petitions

Prayer in W.P.No.27726 of 2014: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Certiorari, to call for the records of the respondent connected with order in original No.29163/2014, dated 28.8.2014 in F.No.R-591/CHA, ordering continuation of the suspension of the licence of the Customs Broker, M/s.Mars Shipping Services (PAN No.AAMF5088N) in exercise of the powers conferred on the said respondent under Regulation 19(2) of the Customs Broker Licensing Regulations, 2013 and quash the same since it has been passed without jurisdiction and without following due process of law as contemplated under the CBLR, 2013.

Prayer in W.P.No.27727 of 2014: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Certiorari, to call for the records of the respondent connected with the show cause notice issued under Sub Regulation 1 of Regulation 20 of the CBLR, 2013, dated 8.9.2014 in F.No.R-653/CHA issued by the respondent, quash the same on account of the same having drawn a pre-concluded and pre-judged view, which is in clear violation to the principles of natural justice.

For Petitioner : Mr.N.Viswanathan

in both WPs. Mr.S.Baskaran

For Respondents : Mr.V.Sundereswaran,

in both W.Ps. Senior Panel Counsel for R1

COMMON ORDER

The case of the petitioner in both the writ petitions in brief, as set out in the affidavit filed in support of the writ petitions, is that the petitioner is a licensed Custom House Agent since 1998 holding CHA license bearing No.R-591/CHA granted by the respondent herein, viz., the Commissioner of Customs, (Seaport-Import), Chennai. Ever since the grant of the said license of them, they have been efficiently transacting the business by strict adherence to the rules and regulations and have never come to the adverse notice of the customs authorities. The representative of the petitioner firm is a partner and also an authorized signatory of the company having passed the required examination conducted by the Customs Department as early as in the year 1999 in terms of then Regulation 9 of the Custom House Agent Licensing Regulations, 1984 (presently Regulation no. 7 of CBLR) while Mr. B.Ravi & Mrs. Rani Mohan are the other partners of the petitioner firm. The petitioner had employed over 15 personnel's under them and they have a good reputation and goodwill in the market and have been very meticulous in complying with the customs procedures and requirements in transacting business with the customs. However, their customs license came to be suspended by the respondent herein vide her order dated 31.07.14 for having acted as a CHA for the import clearance made in the name of (1) M/s. Kawarlal & Co., and (2) D.K.Enterprises, both Chennai based importers. The petitioner firm has filed 90 Bills for M/s. Kawarlal & Co., and 51 Bills for M/s D.K.Enterprises at the Air cargo complex at Chennai for the period between January 2008 to September 2009 and all the goods imported by the said companies under the respective Bills of Entry have already been assessed to duty and cleared out of customs charge in strict compliance with the provisions contained in the Customs Act. The bills of entry were filed on behalf of the importer, M/s Kawarlal & Co., and M/s D.K.Enterprises and the importers have duly filed their declaration in the bills of entry with regard to the correctness of the particulars furnished therein. However, the respondent herein without any offence report being received by the investigating agency as required under Regulation 20 of CBLR, 2013 and also based on the only averment that the above named two companies have cleared the goods without production of the ADC-NOC and the form 10 license in respect of the imports made by them as required under the Drugs and Cosmetics Act, has passed the impugned order by arriving at the categorical conclusion that they had allowed unauthorized persons to handle customs clearance work and that they had signed the documents without verifying the details and the documents and that

their firm had also failed to obtain any authorization from the actual IEC holders and have thus aided and abetted the misuse of the IEC by unauthorized persons and had further alleged that the CHA had not verified the antecedents of the IEC holders and had failed to advise the clients/importers to comply with the provisions of the Customs Act and had failed to exercise due diligence to ascertain the correctness of the information furnished by the said importers or their authorized agents, which is in contravention of the CBLR, 2013.

2. According to the petitioner, the respondent passed the impugned order even while recording that the investigation carried out by the authorities revealed that they had attended to the clearance work concerning 51 Bills in respect of M/s. D.K.Enterprises, concluding that they had contravened the various provisions of the CBLR which is without basis. It is stated that the respondent, without properly considering the statutory requirements of regulation 19 (1) of the CBLR, passed the impugned order of suspension without even recording any reasoning for the immediate necessity for suspending their license and further erred in not taking notice of the fact that the investigation carried out in the matter had already resulted in the issue of a notice to the importers as well as to them proposing the imposition of the penalty under Sec. 112 (a) of the Customs Act and thus leaving nothing further for any inquiry whereas the regulation in question only permitted the suspension to be made only in appropriate cases where an enquiry against the broker is pending or contemplated as not when no enquiry is pending or contemplated. Therefore, according to the petitioner, the respondent herein had passed the impugned order in excess of the authority conferred on him thereby, the said order is unsustainable in law. It is also stated that the respondent had erroneously come to the conclusion that the petitioner has committed serious violation under the CBLR, 2013, without considering the fact that the Bills of Entry so presented for clearance were properly verified, assessed and out of charge order given by the Customs Act which on the face of the record and hence, the impugned order is liable to set aside. The respondents also exhibited and non application of mind in passing the impugned order on the ground that the continuance of the petitioner to act under the said license would be against the interest of revenue even when the investigation carried out did not result in any loss of government revenue and also when the regulation mandated only an immediate necessity for such suspension which is certainly not supported by the reasoning namely detriment to the revenue.

3. According to the petitioner, a show cause notice dated 29.05.2014 concerning the imports made in the name of M/s. Kawarlal & Co., and the show cause notice dated 13.06.2014 concerning the imports made in the name of M/s D.K.Enterprises were issued by the Commissioner of Customs, Airport and Air Cargo Complex to the petitioner under Section 124 of the Customs Act,

clearly recording that the same were issued without prejudice to any other action that may be taken against the petitioner under the Customs Act or under any other law for the time being in force and a copy of the said notices marked to the licensing authority, the respondent herein, among others for initiating action against the petitioner for violation of Customs House Agent's License Regulations, 1984 (in short, "CHALR, 1984"). The petitioner had filed their detailed replies to the said show cause notices vide their reply dated 26.06.2014 and 15.07.2014 respectively stoutly contesting the proposal to impose penalties against them under Section 112 (a) of the Customs Act.

4. According to the petitioner, in the above factual position, the respondent herein had passed an order dated 31.07.2014 for suspension of the licence No. R-591/CHA of the petitioner, viz., M/s Mars Shipping Services with immediate effect in terms of the powers vested with him under Regulation 19(1) of the CBLR, 2013 without giving any proper reasons or made out a case to pass the order requiring the immediate compelling situation to suspend the operation of the petitioner firms as a CHA in Chennai Custom House. Aggrieved by the order dated 31.07.14 of the respondent herein suspending the operations of their license, the petitioner had preferred a writ petition in W.P.No.21782/2014 before this Court, challenging the legality of such order. Pursuant to the orders of this Court in the said Writ Petition, the respondent herein, after hearing the petitioner, passed the present impugned order dated 28.08.2014, in and by which, according to the petitioner, the respondent ordered the continuance of the suspension of their license on a totally different ground that the allegations related to the violation of the Drugs and Cosmetics Act involving the possible jeopardizing of human life as against her earlier order dated 31.07.14 recording the reason for suspension as involving revenue's interest. It is stated that the respondent did not record any finding with regard to the receipt of the offence report filed in this matter without which the suspension ordered is bad in law. The petitioner moved a petition dated 08.09.14 vide M.P.No.2/2014 seeking amendment to the prayer made in the original writ petition No.21782 of 2014 also challenging the further order dated 28.08.14 passed in this matter ordering continued suspension of their license. The petitioner submits that when the said amendment application in M.P.No.2 of 2014 came up for hearing, this Court, while taking note of the fact that the original writ petition had become infructuous consequent to the further order dated 28.08.14 passed by the respondent herein ordering continued suspension, had dismissed the said writ petition with liberty to the petitioner to challenge the order dated 08.10.2014.

5. It is also stated that pursuant to the continued order of suspension dated 28.08.2014, the respondent issued a show cause notice dated 08.09.2014 under Sub-Regulation 1 of Regulation 20 of the CBLR, 2013 asking the petitioner/customs broker to show cause to the Inquiry Officer as to why the licence issued to the customs broker should not be revoked and the security deposited by them should not be forfeited or penalty should not be imposed upon them

under Regulation 18 of CBLR, 2013 and also further directed the petitioner herein to submit their statement of defence to the inquiry officer within 30 days from the date of receipt of the said notice. The petitioner had submitted their written statement of defence dated 09.10.2014 to the inquiry officer appointed for this purpose.

6. According to the petitioner, the continued order of suspension had totally crippled their operations and they were put to severe loss of reputation as well as financial loss also and also leading to non-employment and losing of high profiled and other reputed clients, for no fault of the petitioner firm. The respondent, without following the due process of law as contemplated under the Customs Act and the rules and regulations made thereunder, proceeded to pass the impugned order on a pre-determined notion based on certain extraneous reasons and irrelevant considerations. It is stated that even though alternative remedy is provided for under the CBLR, by way of appeal before the Tribunal, since the impugned order is passed without jurisdiction and in excess of the powers conferred on the respondent, the present writ petitions are maintainable.

7. In view of the above, the petitioner has come forward with these two writ petitions, challenging the suspension order, dated 28.8.2014 and the show cause notice dated 8.9.2014 respectively.

8. A common counter affidavit has been filed on behalf of the respondent, wherein, it is stated that both the writ petitions filed, challenging the impugned suspension order, dated 28.8.2014 as well as show cause notice dated 8.9.2014 are misconceived and not maintainable since both the orders are amenable to appeal remedy under the provisions of CBLR, 2013 and admittedly, the petitioner has submitted itself to the process of adjudication by filing written submissions and sought for personal hearing, the present writ petitions are premature and liable to be dismissed. It is stated that the impugned order was issued based on the show cause notice received from Air Cargo Intelligence Unit, Chennai informing that during investigation based upon the reference from the Appraising Groups to the effect that two companies, viz., M/s.Antoine Becourel Organic Chemical Co., and M/s.Hoewitzer Organic Chemical Co., had cleared drugs/pharmaceuticals, chemicals at Air Cargo Complex, Meenambakkam, Chennai without obtaining the mandatory Form-10 Licence/Assistant Drug Controller (ADC) clearance without proper import licence issued under the provisions of the Drugs and Cosmetics Act, 1940. During the course of investigation, it also came to light that K.Ramlal Jain is the owner of M/s.D.K.Enterprises and M/s.Kawarlal & Co., who imported similar drugs through ACC, Chennai. On investigation, it was found that the Customs Broker, M/s.Mars Shipping Services, the petitioner herein had filed the Bills of Entry for the clearance of the goods. Hence, the licence of the petitioner was suspended by the respondent on 31.7.2014 and accordingly, order of suspension under Regulation 19 of CLR, 2013 was passed, fixing personal hearing on 12.8.2014, on which date, the petitioner was

represented and written submissions were filed. Upon perusing the objections and hearing the petitioner on 28.8.2014, the order of suspension was continued. The entire order was passed based upon factual adjudication of facts and based upon the statement given by various responsible persons. On 8.9.2014, show cause notice was issued under Regulation 20(1) of CBLR, 2013 appointing an enquiry officer to enquire into the charges without being influenced by the order passed by the Commissioner suspending the license under Regulation 19(1) of CBLR, 2013, while directing the petitioner to file its objections. Pursuant to the same, on 9.10.2014, the petitioner has also filed written statement by way of defence and requested a personal hearing. However, without participating in the personal hearing before the enquiry officer and awaiting the final order, the present writ petitions were filed by the petitioner. It is also stated that the show cause notice was issued for the purpose of taking action for the violation of CBLR, 2013 committed by the petitioner after conducting an enquiry and hence, it cannot be construed that it is a preconceived as contended by the petitioner and if at all the petitioner is aggrieved, it is always open to the petitioner to file appeal under Section 21 of the Act. Therefore, with these averments, the respondent sought for dismissal of the writ petitions as devoid of merits.

9. Heard the learned counsel on either side and perused the entire records.

10. Challenging the impugned order, dated 28.8.2014 ordering continuation of suspension of the operation of Customs Broker License passed by the respondent in exercise of her power under Regulation 19(1) of CBLR, 2013, Mr.N.Viswanathan, learned counsel appearing for the petitioner would contend that the respondent has mechanically passed the said order with a pre-determined mind in a mechanical manner without considering the fact that there was no offence report by the Investigating Agency, which is a statutory requirement in terms of Regulation 20(1) of CBLR, 2013 and except mentioning that "if the broker is allowed to operate, it will be detrimental to the interest of revenue", there were no justifiable or compelling reasons mentioned in the impugned order, which warranted the immediate suspension of the license. He contended that no offence report was received as required under regulation 20 (1) of the CBLR, 2013 and therefore the suo-motto initiation of the proceedings for suspension of the license of the petitioner by the respondent is not sustainable in law. He also pointed out that in para 21.2 of the impugned order of suspension, the respondent herself has specifically mentioned that the Customs Department is responsible for compliance of all other Acts including the Drugs and Cosmetic Act and any violation of the same renders the goods liable for action under the Customs Act and therefore the non-compliance is serious as it jeopardizes human lives and therefore, when such is the view of the respondent, again giving finding to the effect that "the order of suspension against the petitioner for non-fulfillment of the obligation cast on them under CBLR is proper", is wholly misconceived and self-contradictory and hence, it is liable to be quashed.

11. As regards the impugned show cause notice, dated 8.9.2014, the learned counsel for the petitioner contended that in para 21, the respondent has categorically pre-concluded and pre-determined the issue by mentioning that "it was concluded that the Custom broker had failed to fulfill the obligation cast upon them under the regulations mentioned to therein and committed professional misconduct, while acting as custom broker" and therefore, once, the respondent has concluded the issue in negative holding that the petitioner had committed professional mis-conduct, thereafter appointing the Enquiry Officer to probe into the matter and conducting the enquiry, would be a nullity and an empty formality. He contended that the Enquiry Officer, being a subordinate to the respondent, cannot be expected to act in diligent manner, except to follow the pre-drawn conclusion already drawn by the respondent. According to the learned counsel, since the respondent is the ultimate authority for deciding the case and once she had already gone on record concluding the matter against the petitioner, it cannot be expected that a considered and judicious order would be passed by the Enquiry officer in accordance with law. Therefore, the learned counsel would contend that the said show cause notice is liable to be set aside.

12. In support of his contentions, the learned counsel for the petitioner relied upon the decisions reported in "Oryx Fisheries (P) Ltd., versus Union of India" reported in 2011 (266) ELT 422 (SC)", "SBQ Steels Ltd., versus CC&CEX, Guntur" reported in 2014 (300) E.L.T. 185 (A.P.) and as regards the maintainability of the writ petitions, the learned counsel relied upon a decision reported in "Whirlpool Corporation versus Registrar of Trade Marks, Mumbai and others" reported in (1998) 8 SCC 1, since the impugned order violated the principles of natural justice, though appeal remedy is available, the writ petition is maintainable.

13. It appears that for certain irregularities alleged to have been committed by the petitioner as reported by Air Cargo Intelligence Unit (ACIU), Chennai, while exercising her power under Regulation 19(1) of CBLR, 2013, the respondent herein, by proceedings dated 31.7.2014, has suspended the operation of customs broker license of the petitioner and thereafter, after affording a personal hearing to the petitioner and on considering the objections filed by the petitioner, by proceedings, dated 28.8.2014, ordered continuation of suspension that was made on 31.7.2014. Thereafter, on 8.9.2014, a show cause was issued by the respondent under Regulation 20(1) of CBLR, 2013, appointing an Enquiry Officer to conduct an enquiry into the charges levelled against the petitioner for alleged failure to fulfill the obligations cast upon the petitioner under Regulations 10, 11(a), 11(e), 11(n) and 11(d) of CLR, 2013 and alleged professional misconduct while acting as a Customs Broker.

14. It is not in dispute that the impugned order, dated 28.8.2014 ordering continuation of suspension of license was passed by the respondent after affording an opportunity of personal hearing to the petitioner and on consideration of the objections filed by the petitioner in detail. It is not the contention of the petitioner that the respondent has no jurisdiction to pass the order or it has been passed in breach of the rules of natural justice. The contention of the learned counsel for the petitioner is that respondent has mechanically passed the said order with a pre-determined mind in a mechanical manner without considering the fact that there was no offence report by the Investigating Agency, which is a statutory requirement in terms of Regulation 20(1) of CBLR, 2013. It is appropriate to extract Regulations 19 and 20(1) of CBLR, 2013, which read as under:

"Regulation 19. Suspension of licence:-

(1) Notwithstanding anything contained in regulation 18, the Commissioner of Customs may, in appropriate cases where immediate action is necessary, suspend the licence of a Customs Broker where an enquiry against such agent is pending or contemplated;

(2) Where a licence is suspended under sub-regulation (1), the Commissioner of Customs shall, within fifteen days from the date of such suspension, give an opportunity of hearing to the Customs Broker 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 Broker;

Provided that in case the Commissioner of Customs passes an order for continuing the suspension, the further procedure thereafter shall be provided in regulation 20."

Regulation 20(1).

"20. Suspension or revocation of licence.

(1) The Commissioner of Customs may, subject to the provisions of regulation 22, revoke the licence of a Customs House Agent and order for forfeiture of part or whole of security, or only order forfeiture of part or whole of security, on any of the following grounds, namely :

(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 Station

The above Regulation contains three ingredients under which, license can be suspended, namely (i) failure to comply with the bond conditions (ii) failure to comply with the regulations and (iii) a misconduct. In the present case, admittedly, there was no offence report from Investigating Agency so as to make it as basis for suspending the license in terms of Regulation 20(1) of CBLR, 2013. It is also not in dispute that the alleged occurrence was taken place as early as between January 2008 and September 2009 and the goods were assessed and cleared by the customs authorities by accepting the documents submitted by the importer and the petitioner being the Customs Broker, on behalf of the importer, presented the same. However, only in the year 2014, i.e. after lapse of more than five years, the proceedings of suspension were initiated and thereafter, after affording personal hearing to the petitioner, by impugned proceedings, dated 28.8.2014, the respondent ordered continuation of suspension of licence of the petitioner that was ordered on 31.7.2014. As could be seen from the Regulation 19(1) extracted above, it is clear that only in appropriate cases where immediate action is necessary against the customs broker, the licence of the broker has to be suspended. It is pertinent to note that except the irregularities alleged to have been committed by the petitioner in the year 2008, there were no adverse report against the petitioner that the petitioner has repeatedly involved in such irregularities between 2009 to 2014. On a careful scrutiny of the entire facts and in view of the fact that even the respondent herself initiated the proceedings that too after a lapse of five years and also the fact that the petitioner was allowed to act as a licensed Broker till 2014, I am of the considered that view that in the present case, immediate action is not required so as to invoke the Regulation in order to suspend the licence. Further, in para 19 of the impugned order, the respondent has given reasons for suspending the licence by stating that "if the broker is allowed to operate, it will be detrimental to the interest of revenue". This reason, in my opinion, is not justifiable since as already stated above, there were no adverse remarks against the petitioner in between 2009 and 2014 and except the present one, no antecedents where loss of revenue were reported against the petitioner. Therefore, in such view of the matter, the impugned order, dated 28.8.2014 cannot be sustained. However, as the allegations were made against the petitioner since the obligations cast upon the petitioner have allegedly not been discharged by the petitioner as contended by the respondent, there is no impediment for the respondent to take

15. As regards the show cause notice, dated 8.9.2014, it is to be noted that the respondent has followed the procedure contemplated under the Regulations after having passed an order for continuing the suspension, by proceedings dated 28.8.2014. As per Regulation 18 of the CBLR, 2013, the respondent is empowered to revoke the licence of the customs broker and order for forfeiture of part or whole security or impose penalty not exceeding fifty thousand rupees. In order to probe into the charges levelled against the petitioner, a show cause notice dated 8.9.2014 has been issued to the petitioner, by appointing an Enquiry Officer, calling upon the petitioner to file written statement of defence and objections.

16. It is relevant to extract para 21 of the impugned show cause notice, dated 8.9.2014 on which, the learned counsel for the petitioner has placed strong reliance, which reads as under:

"21. After going through the records of the case and the submissions made by the manager of the Customs Broker against the suspension order dated 31.07.2014 during the personal hearing, it was concluded that the Customs Broker failed to fulfill the obligations cast upon them under Regulation 10, 11(a), 11(e), 11(n) and 11(d) of CBLR, 2013 and committed professional misconduct while acting as a Customs Broker, as alleged in the suspension order dated 31.7.2014 was continued vide O-in-O No.29163/2014 dated 28.8.2014 issued under Regulation 19(2) of CBLR, 2013."

17. A perusal of the above emphasized portion, it is clear that the respondent has categorically come to the conclusion that the Customs Broker failed to fulfill the obligation cast upon them under the regulations mentioned therein and committed professional misconduct, while acting as custom broker. Therefore, relying upon the above emphasized portion in the show cause notice, the learned counsel for the petitioner would contend that even at the stage of the show cause notice itself, the respondent has completely made up his mind and reached definite conclusion about the failure of the petitioner to fulfill the obligations cast upon them and also about the professional mis-conduct while acting as a Customs Broker. I find a considerable force in the contention of the learned counsel for the petitioner. In fact, this Court is well aware of the settled legal position that the show cause notice cannot be read hyper-technically, but it is to be read reasonably and that the Writ Court should be slow and circumspect in interfering at the show cause stage, unless it is successfully proved that the Authority issuing the show cause notice is not competent or the show cause notice is outcome of malice and de hors the provisions of law, but in the present case, the emphasized portion contained (cited supra) in the impugned show cause notice, would clearly indicate that the respondent has

predetermined the issue. This Court would have appreciated the respondent if she could have added atleast the words, 'prima facie' before the sentence starting "it was concluded that the Customs Broker failed to ...". Therefore, as rightly contended by the learned counsel for the petitioner that from a reading of the impugned show cause notice, an overall impression one gets is that the respondent has predetermined the issue.

18. In this regard, it is worthwhile to refer the decision of the Hon'ble Supreme Court reported in "Oryx Fisheries (P) Ltd., versus Union of India" reported in (2010) 13 SCC 427 = 2011 (266) ELT 422 (SC)", wherein, the Hon'ble Supreme Court has held as under in para 31:

"31. It is of course true that the show-cause notice cannot be read hypertechnically and it is well settled that it is to be read reasonably. But one thing is clear that while reading a show-cause notice the person who is subject to it must get an impression that he will get an effective opportunity to rebut the allegations contained in the show-cause notice and prove his innocence. If on a reasonable reading of a show-cause notice a person of ordinary prudence gets the feeling that his reply to the show-cause notice will be an empty ceremony and he will merely knock his head against the impenetrable wall of prejudged opinion, such a show-cause notice does not commence a fair procedure especially when it is issued in a quasi-judicial proceeding under a statutory regulation which promises to give the person proceeded against a reasonable opportunity of defence.

32. Therefore, while issuing a show-cause notice, the authorities must take care to manifestly keep an open mind as they are to act fairly in adjudging the guilt or otherwise of the person proceeded against and specially when he has the power to take a punitive step against the person after giving him a show-cause notice.

33. The principle that justice must not only be done but it must eminently appear to be done as well is equally applicable to quasi-judicial proceeding if such a proceeding has to inspire confidence in the mind of those who are subject to it.

19. In "Siemens Ltd versus State of Maharashtra and others" reported in (2006) 12 SCC 33 = 2-007 (207) ELT 168 (SC), the Hon'ble Supreme Court has held as under in para 9 to 11 as under:

"9. Although ordinarily a writ court may not exercise its discretionary jurisdiction in entertaining a writ petition questioning a notice to show cause unless the same inter alia appears to have been without jurisdiction as has been held by this Court in some decisions

including State of U.P. v. Brahm Datt Sharma¹, Special Director v. Mohd. Ghulam Ghouse² and Union of India v. Kunisetty Satyanarayana³, but the question herein has to be considered from a different angle viz. when a notice is issued with premeditation, a writ petition would be maintainable. In such an event, even if the court directs the statutory authority to hear the matter afresh, ordinarily such hearing would not yield any fruitful purpose. (See K.I. Shephard v. Union of India⁴.) It is evident in the instant case that the respondent has clearly made up its mind. It explicitly said so both in the counter-affidavit as also in its purported show-cause notice.

10. The said principle has been followed by this Court in V.C., Banaras Hindu University v. Shrikant⁵, stating: (SCC p. 60, paras 48-49)

"48. The Vice-Chancellor appears to have made up his mind to impose the punishment of dismissal on the respondent herein. A post-decisional hearing given by the High Court was illusory in this case.

49. In K.I. Shephard v. Union of India⁴ this Court held: (SCC p. 449, para 16)

'It is common experience that once a decision has been taken, there is a tendency to uphold it and a representation may not really yield any fruitful purpose.' "

.(See also Shekhar Ghosh v. Union of India⁶ and Rajesh Kumar v. D.C.I.T.⁷)

11. A bare perusal of the order impugned before the High Court as also the statements made before us in the counter-affidavit filed by the respondents, we are satisfied that the statutory authority has already applied its mind and has formed an opinion as regards the liability or otherwise of the appellant. If in passing the order the respondent has already determined the liability of the appellant and the only question which remains for its consideration is quantification thereof, the same does not remain in the realm of a show-cause notice. The writ petition, in our opinion, was maintainable."

20. In very similar circumstances, this Court, by its order, dated 15.9.2014 in W.P.No.21941 of 2014, has set aside the show cause notice impugned therein, with the following observation.

³ The main ground on which the impugned notice is challenged is that the contents of the show cause notice disclose a pre-conceived and closed mind. A
<https://hcservices.ecourts.gov.in/hcservices/>

careful look at the show cause notice would show that upto paragraph 7, the show cause notice contains the narration of the facts relating to investigation conducted, the evidence recorded in the course of enquiry, etc.,

"4. But, thereafter, in paragraph 9, the first respondent has recorded a series of findings. These findings, are very categorical in nature, without leaving any scope for the petitioner to explain.

"5. Even in paragraph 14 of the impugned show cause notice, the first respondent has asserted that a clear prima facie case has been made out against the petitioner and that if the petitioner is allowed to continue to operate, it would be detrimental to the interest of revenue.

"6. In the light of the categorical assertions and findings, I do not think that any useful purpose would be served in asking the petitioner to submit a reply to the show cause notice. At the stage of show cause notice, the first respondent should only have an open mind. If his mind is closed with predetermined conclusions, the requirement of giving an opportunity to show cause becomes nugatory.

"7. In SBQ Steels Ltd., Vs. Commissioner of Customs, Central Excise and Sales Tax, Guntur reported in 2014 (300) E.L.T. 185 (A.P.) a Division Bench of Andhra Pradesh High Court took exception even to use of the words it is clear in the show cause notice. Therefore, the impugned show cause notice is liable to be set aside.

"8. Accordingly, the writ petition is allowed and the show cause notice is set aside. It is open to the first respondent to issue a fresh show cause notice, keeping the object of issuing show cause notice in mind. Consequently, the connected miscellaneous petition is closed. No costs."

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21. Further, it is settled principle of law that a quasi-judicial authority, while acting in exercise of its statutory power must act fairly and must act with an open mind while initiating the show cause proceeding. A show cause notice is meant to give the person proceeded against a reasonable opportunity of making his objection against the proposed charges indicated in the notice. At the stage of show cause notice, the person proceeded against must be told the charges against him so that he can take his defence and prove his innocence. At that stage, the authority issuing the charge sheet/show cause notice, cannot, instead of telling him the charges, confront him with definite conclusions of his alleged guilt. If that is done, as has been done in the

present case, the entire proceeding initiated by the show cause notice gets vitiated by unfairness and bias and the subsequent proceedings become an idle ceremony. The principle that justice must not only be done but it must eminently appear to be done as well is equally applicable to quasi judicial proceeding if such a proceeding has to inspire confidence in the mind of those who are subjected to it.

22. Having followed the above cited judgments of the Hon'ble Supreme Court as well as this Court and in view of the above discussion, this Court is of the view that the impugned show cause notice, wherein, the usage of the words, viz., "it was concluded that the Customs Broker failed to..." as pointed out above, would clearly indicate predetermination by the respondent regarding the failure on the part of the petitioner in respect of the obligations cast upon them under the Regulations as well as committal of professional mis-conduct by the petitioner and therefore, on this ground, the impugned show cause is liable to be set aside.

23. Accordingly, the Writ Petitions are allowed and the impugned order, dated 28.8.2014 as well as the impugned show cause notice, dated 8.9.2014 are hereby set aside. The respondent is hereby directed to proceed afresh by issuing show cause notice clearly indicating the alleged failures of obligations cast upon the petitioner as well as mis-conduct by ensuring that it does not indicate any premeditation or prejudgment by the respondent. In case any such fresh show cause notice is issued by the respondent, the petitioner shall be furnished with the material on the basis of which the show cause notice issued and also a reasonable opportunity to file their objections with supporting material apart from personal hearing and then pass a reasoned order in accordance with law. However, considering the fact that the suspension of licence ordered by the respondent by the impugned order, dated 28.8.2014, throws the petitioner out of business once and for all and deprives them of their very livelihood and now since the impugned suspension order, dated 28.8.2014 and the impugned show cause notice, dated 8.9.2014 are set aside, the respondent is directed to permit the petitioner to operate their customs broker licence. Consequently, connected MPs closed. No costs.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

To

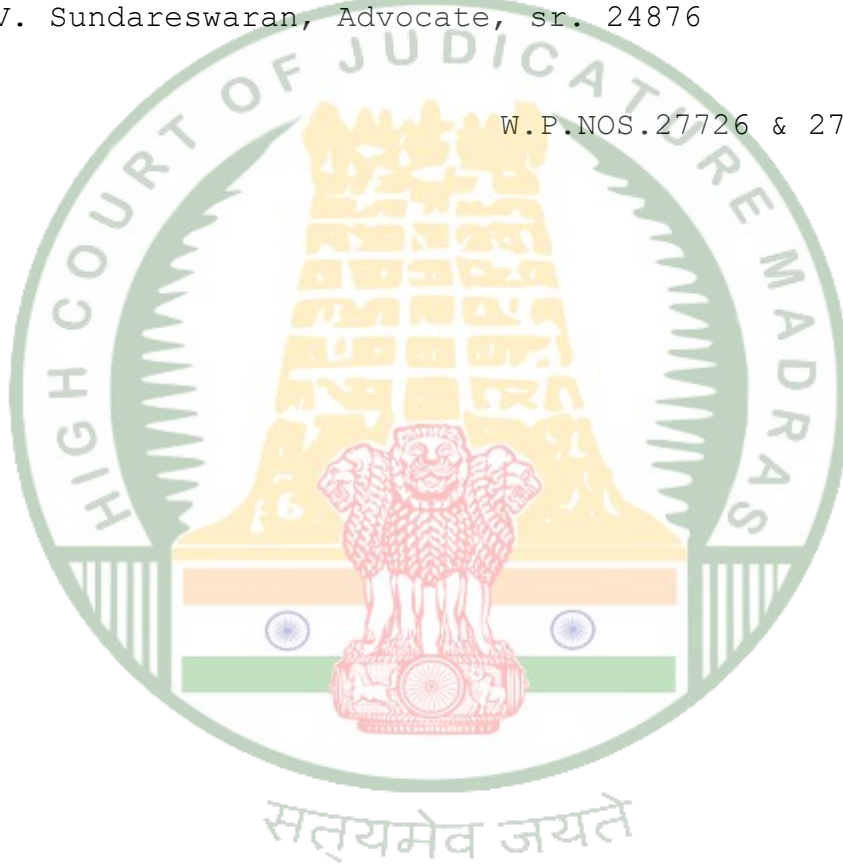
The Commissioner of Customs (Seaport-Import),
Custom House,
60, Rajaji Salai,
Chennai-600 001.

2 ccs to Mr.N. Viswanathan, Advocate, Sr. 24504
1 cc to Mr.V. Sundareswaran, Advocate, sr. 24876

W.P.NOS.27726 & 27727 OF 2014

JP (CO)

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