IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.07.2015

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

Writ Petition No.28921 of 2014
And M.P.No.1 of 2014

Reserved on 19.03.2015

M/s.D.V.R.Freight Forwarders Pvt.Ltd.,
Rep. by its Managing Director,
Shri R.Saravana Kumar ... Petitioner

-Vs-

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

2. The Inquiry Officer/
   Deputy Commissioner of Customs,
   Custom House, No.60, Rajaji Salai,
   Chennai-600 001. ... Respondents

Prayer: 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 pertaining to the impugned order-in-original 30233/2014 dated 20.10.2014 in F.No.R-243/CHA passed by the first respondent and quash the same.

For Petitioner : Mr.Hari Radhakrishnan

For Respondents : Mr.T.Chandrasekaran, SCGSC

ORDER

The case of the petitioner in the writ petition in brief, as set out in the affidavit filed in support of the writ petition, is that the petitioner is a licensed Custom House Agent holding license bearing No.R-243. Ever since the grant of the said license to them, the petitioner has been efficiently transacting the business with unblemished record. In the course of their business, the petitioner had acted as a customs broker of various imports such as M/s.Lucky International, Chennai, M/s.Kannan Printing Solutions, Melmaravauthur, who had imported PVC flex banners from Malaysia. The officers of the Directorate of Revenue Intelligence, Chennai had commenced investigation into these imports on the intelligence that these importers were misdeclaring the country of origin of the imported PVC Flex banners as Malaysia instead of China for evading anti-dumping duty. The Government had imposed anti-dumping duty on PVC flex banners imported from China. The petitioner was summoned and his statement was recorded by the Directorate of Revenue Intelligence, Chennai and it was alleged that the petitioner was involved evasion of duty by the various importers. Consequently, by order, dated 18.11.2013, the first respondent suspended the licence of the petitioner by invoking Regulation 19(1) of the Customs Broker Licensing Regulations, 2013 (in short, CBLR, 2013). Thereafter, after providing a personal hearing to the petitioner on 28.11.2013, the first respondent passed order, dated 12.12.2013, ordering continuation of suspension of the licence of the petitioner under Regulation 19(2) of CBLR, 2013 and also issued a show cause notice dated 12.12.2013 proposing to revoke the licence of the petitioner under the provisions of Regulation 18 of CBLR, 2013.

2. Challenging the order of suspension of the licence was continued, dated 12.12.2013, the petitioner has filed a writ petition before this Court in W.P.No.35318 of 2013, which was disposed of by order, dated 30.12.2013, directing the petitioner to approach the Customs Excise and Service Tax Appellate Tribunal. Pursuant to the same, the petitioner filed an appeal before the Tribunal. In the meanwhile, the first respondent appointed the second respondent as Enquiry Officer in terms of provisions of the Regulation 20 of CBLR, 2013. After the enquiry, the Enquiry Officer submitted his report on 24.7.2014 beyond the mandatory period of 90 days from the date of show cause notice, holding that the allegation of violation of Regulation 11(d) and 18(c) stood proved. The petitioner submitted a reply to the enquiry report on 26.08.2014. On consideration of the said report as well as the reply of the petitioner, the first respondent passed the impugned order, dated 21.10.2014 revoking the licence of the petitioner and also ordered forfeiture of the amount of security deposit made by the petitioner. Aggrieved by the same, the petitioner has come forward with the present writ petition.

3. A counter affidavit has been filed on behalf of the respondents, wherein, it is stated that Directorate of Revenue

Intelligenced (DRI), Chennai made an investigation of a case of import of PVC flex banners by mis-declaring the goods to evade anti-dumping duty and came to the notice that M/s.DVR Frieght Forwarders Pvt.Ltd. had acted as Customs Broker and had facilitated clearance of PVC flex banners imported by M/s.Jeyam Impex and four other units. During the investigation, certain irregularities were found, viz., that the Director of the petitioner being the holder of the customs brokers license, encouraged his relatives and friends and obtained IECs in their names and provided those IECs to one Kamalesh Jain of M/s.J.K.Enterprises to import PVC flex banners for monetary consideration for the IEC holders with an intention to get more business for himself; that the customs broker facilitated clearance of PVC flex banner consignments imported by Sailesh Jain using the IECs of M/s.Anupam Enterprises and three other units knowing very well that those consignments were not imported by the actual IEC holders; that the customs broker obtained the documents related to the said imports from Shri Sailesh Jain of M/s.J.K.Enterprises, a person other than the IEC holders and also co-ordinated with him with regard to customs including duty payments; that the customs broker did not forward the consignments to the addresses of the said IEC holders and facilitated movement of the said goods to godowns indicated by Shri Sailesh Jain, thereby facilitated the perpetrators in the said customs fraud; that the customs broker received the charges towards customs clearance of the said consignments from Shri Sailesh Jain in cash and not from the IEC holders; and that the customs broker never brought this illegal activity to the knowledge of customs and actively colluded with Shri Sailesh Jain in the conspiracy.

4. Hence, it was found that there had been lapses on the part of the Customs Broker M/s. DVR Freight Forwarders Pvt. Ltd. In as much as;-

a. The Customs Broker contravened the provisions of Regulation 11(a) of the CBLR, 2013 in as much as he willfully and deliberately aided and abetted Shri Sailesh Jain in import of PVC flex banners by misusing the ICEs of other individuals;

b. The Customs Broker was aware that the said goods were being imported by Shri Sailesh Jain misusing the ICEs of different companies / firms, but he did not bring it to the knowledge of Deputy Commissioner of Customs of Assistant Commissioner of Customs and also paved way for mis-declaration of value, weight and Country of Origin to avoid payment of legitimate customs duty including anti-dumping duty, which led to huge duty evasion. Hence, the Customs Broker filed to comply with the provisions of Regulation11(d) of the CBLR, 2013;

c. As per Regulation 11(a) of the CBLR, 2013, the customs Broker should verify antecedent, correctness of Importer Exporter Code (ICE)number, identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information. However, in this case, the Customs Broker deliberately colluded with Shri Sailesh Jain in import of flex banners by misusing ICEs of many firms/companies and evasion of customs duty;

d. The Customs Broker failed to comply with the conditions of the bond executed by him under regulation 10 of CHALR, 2004 (now Regulation 8 of the CBLR, 2013); and

e. Proved professional misconduct and indulged in breach of trust reposed upon him in good faith. (Reference Regulation 18 (c) of the CBLR, 2013)

In view of the above, it was found that a clear prima facie case exists against the Customs Broker M/s. DVR Freight Forwarders pvt. Ltd., the petitioner herein and if the Customs Broker is allowed to continue to operate it would be detrimental to the interest of revenue and, therefore, it was necessary to take immediate action against the said Customs Broker, to prevent them from further mis-use of their license. Hence, for the above mentioned violations, license of the said Customs Broker was suspended vide order dated 18.11.2013 under Regulation 19(1) of the CBLR, 2013 and to follow the principles of natural justice, a personal hearing was granted to the Customs Broker on 28.11.2013 under Regulation 19(2) of the CBLR, 2013.

5. After going through the facts of the case and submissions made by the counsel of the Customs Broker during personal hearing and in his written submissions, it is found that Customs Broker has made general arguments against the suspension order and not submitted any evidence to show that they had acted in a bonafide manner as a Customs Broker. Hence, it was found that the Customs Broker had failed to fulfill the condition of the Bond executed by him under Regulation 10 of the CHALR, 2013 (now Regulation 8 of the CBLR, 2013), and failed fulfill the obligations cast upon him under Regulation 11(a), 11(d) and 11(n) of the CBLR, 2013 and committed professional mis-conduct while acting as a Customs Broker, as alleged in the suspension order dated 18.11.2013. Personal hearing was granted on 28.12.2013 which was attended by the counsel for the Customs Broker. The Suspension was continued vide order in original No.22943/2013 dated 12.12.2013.

6. A show cause notice dated 12.12.2013 was issued to the Customs Broker M/s. DVR Freight Forwarders Pvt. Ltd calling upon to show cause, as to why the licence issued to them should not be revoked and security deposited by them should not be forfeited or penalty should not be imposed upon them under Regulation 18 of the CBLR, 2013, for their failure to comply with the provisions of CBLR, 2013. An inquiry officer in the rank of Deputy Commissioner, has also been appointed to conduct inquiry into the case under Regulation 20 of the CBLR, 2013. The Customs Broker M/s. DVR Freight Forwarders Pvt Ltd., Chennai approached the Hon'ble High Court and filed writ petition praying for issuance of writ of certiorari to call for the records pertaining to the impugned order in original No.22943/2013 dated 12.12.2013 passed by Commissioner of Customs (Imports) and quash the same. However, Hon'ble High Court vide order dated 30.12.2013 in WP No.35318/2013 has dismissed the writ petition and directed the Customs Broker to file an appeal before the Tribunal.

7. The Inquiry Officer after going through the records of the case and submission made by the Customs Broker has submitted a inquiry report stating that all the ingredient of natural justice are thoroughly followed starting from issue of Show Cause Notice, waiting for reply for the notice, allowing examination of the witnesses, granting Personal hearing and then allowing them to file their final reply. Inquiry Officer vide his report has reported that the charges of violation of Regulation 11(a) & 11(n) of CBLR, 2013 stands not proved and however holds the charges of violation of Regulation 11(d) and 18(c) of the CBLR, 2013 and conditions of bond executed under Regulation 10 of CHALR, 2004 stand proved. Copy of the enquiry report was forwarded to the Customs broker on 25.07.2014 to make any representation to the Commissioner of Customs against the findings of the Enquiry Officer under Regulation 20(6) of CBLR, 2013. Having considered the report of the Enquiry Officer and the final representation made by the petitioner, the first respondent, in exercise of his powers conferred under Regulation 20(7) of the CBLR, 2013, by proceedings, dated 20.10.2014 has revoked the licence and also ordered for forfeiture of the security deposit. Therefore, it is stated that after conducting a full-fledged enquiry by following the principles of natural justice in providing personal hearing and since the charges were found proved against the petitioner, the impugned order has been rightly passed by the first respondent, which needs no interference. With these averments, the respondents sought for dismissal of the writ petition.

8. Heard the learned counsel appearing for the petitioner and the learned senior Central Government standing counsel for the respondents and perused the entire records.

9. The case of the respondents is that Shri Saravana Kumar was very well aware of the fact that the goods were actually imported by Shri Sailesh in the name of various IEC holders and if he is prudent and law abiding customs broker, he should have informed the said fact of actual import by Shri Sailesh Jain to the customs authorities and had he informed, the illegal imports of Flex sheets of Chinese origin through Malaysia made by said Sailesh Jain of M/s.J.K.Enterprises evading legitimate customs duty including anti-dumping duty would have been detected earlier. Hence the charge of not informing the department of the issue of hiring of IEC stands proved and thereby, the petitioner violated the provisions of Regulation 11(d) of the Act and that Shri R.Saravana Kumar has admitted to have received an amount of Rs.15,000/- per container from Sh.Sailesh for import of the PVC flex sheet and that he has also signed the letter dated 20.12.2012 and 7.2.2013 addressed to M/s.Perma Shipping Line (India) Pvt.LAtd., in the letter head of M/s.Sri Jayalakshmi Enterprises as proprietor of M/s.Sri Jayalakshmi Enterprises, which amounts to professional misconduct and breach of trust reposted by the department on the customs brother, and thus, charge of violation of Regulation 18(c) stands proved. The customs broker has not produced before the DRI the authorization said to have been obtained from all the imports at the time of investigation and therefore, as evidence in the investigation report and from the statement of R.Saravana Kumar under Section 108 of the Act, the violation of Regulation 11(a) stands proved. Therefore, for the proven charges, the first respondent, while exercising the powers conferred under the provisions of Regulation 20(7) of the CBLR, 2013, ordered revocation of license of the customs brother M/s.DVR Frieght Forwarders Pvt.Ltd., Chennai as well as forfeiture of full amount of security deposit made by the petitioner.

10. Challenging the impugned order of revocation of licence of the Customs Broker, the petitioner herein, Mr.Hari Radhakrishnan, learned counsel appearing for the petitioner would contend that the first respondent has prejudged the issue and the Customs broker Saravana Kumar, at no point of time had admitted any knowledge about the alleged evasion of duty by misdeclaring the country origin and the allegation that the misuse of the IEC has facilitated illegal imports is premature as no order has been passed holding the importers liable for mis-declaration of country of original to evade

anti-dumping duty and hence the show cause notice to the customs broker is premature and it did not give an impression that the customs broker would get an effective opportunity to rebut the allegation contained in the show cause notice and prove innocence. In this regard, the learned counsel relied upon a decision report in "Oryx Fisheries Pvt.Ltd. versus Union of India" and a Division Bench decision of Bombay High Court in "GAC Shipping (India) Pvt.Ltd. versus The Union of India" in W.P.No.1586 of 2014 in support of his contention that impugned order is liable to be set aside on the ground that the proceedings against the importer is pending and no final adjudication has taken place as against the importer. He pointed out that in the present case, even no show cause notice has been issued to the importer alleging that they had mis-declared the country origin to evade anti-dumping duty. The learned counsel also contended that lending/misusing the IE Code is not an offence under the Customs Act and therefore, even assuming that the petitioner facilitated the misuse of the IE Code, the first respondent has no jurisdiction to suspend the petitioner's licence. He relied upon a decision in "Hamid Fahim Ansari versus C.C.(I) reported in 2009 (241) ELT 168 (Bom.). He also pointed out that the enquiry report was not sent beyond the mandatory period of 90 days and on this ground, the impugned proceedings get vitiated. With these contentions, the learned counsel sought for setting aside the impugned proceedings.

11. At the outset, it is to be noted that after issuance of the show cause notice, dated 12.12.2013 to the petitioner, for which, the petitioner had submitted their reply on 10.1.2014. Thereafter, the petitioner participated in the enquiry and on completion of the enquiry, the Enquiry Officer filed his report on 24.7.2014, for which, the petitioner was given opportunity to file their reply and on 26.8.2014, the petitioner has filed the report. After considering the reply, the first respondent has passed the impugned order revoking the license of the petitioner. Therefore, having made replies to the show cause notice and to the report of the Enquiry Officer and having participated in the enquiry, it is not appropriate for the petitioner to raise objections regarding the show cause notice that too after the impugned order was passed and in fact, the show cause notice got merged with the impugned order.

12. Though the learned counsel appearing for the petitioner raised many contentions (cited supra) to attack the impugned order, this Court is not inclined to deal with the same inasmuch as admittedly, as against the impugned order, the petitioner is having efficacious remedy of appeal under Section 129-A of the Act. The Customs law is a complete code by itself.The Customs Actand the Rules

and bye-laws framed thereunder constitute a comprehensive and exhaustive code. The impugned order in the instant case has been passed by the Commissioner of Customs (Imports) in exercise of his power under the Customs Brokers Licensing Regulations, 2013 which are framed under Article 146(2) of the Customs Act, 1962. Regulation 21 provides that a Customs Broker who is aggrieved by any order passed by the Commissioner of Customs under the said regulations may prefer an appeal under Section 129-A of the Customs Act to the Customs, Central Excise and Service Tax Appellate Tribunal. The appeal as provided for, in my opinion, is an efficacious alternative remedy available to an aggrieved broker like the writ petitioner herein. Indeed, I am of the view that the appeal is a more comprehensive remedy.

13. It is a settled principle of law that the writ Court is not certainly sitting in appeal over each and every order passed by the statutory authority. The task of the writ Court to examine the decision-making process was found in the decision reported in “State of UP versus Maharaja Dharmedar Prasad Singh” reported in AIR 1989 SC 997. The writ Court is averse to interfere with the acts and actions of the statutory authorities unless those are beyond jurisdiction or in excess of jurisdiction. The Writ Court will certainly interfere if the impugned orders are contrary to the principles of natural justice causing effect manifest injustice. Unless those ingredients are present, the Writ Court will be slow to interfere in the matter. In the present case, I do not find that the first respondent acted contrary to the principles of natural justice or beyond his jurisdiction in order to interfere with the impugned order.

14. The power underArticle 226of the Constitution of India is an extraordinary power and should be exercised by the High Courts only in those cases where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice causing prejudice to the aggrieved party.

15.In “Titaghur Paper Mills Co.Ltd. versus Stae of Orissa” reported in (1983) 2 SCC 433,a three Judges Bench of the Hon'ble Supreme Court held that where an Act provides for a complete machinery to challenge an order of assessment, the impugned orders of assessment can only be challenged by the mode prescribed by the Act and not by a petition under Article 226 of the Constitution.Where right or liability is created by a statute which gives a special remedy for enforcing it,the remedy provided by that statute must be availed of.

16. In the case of“Whirlpool Corporation versus Registrar of Trade Marks”reported in (1998) 8 SCC 1, the Hon'ble Supreme Court observed that under Article 226 of the Constitution of India, the High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious alternative remedy is available, the High Court would not normally exercise its jurisdiction.

17. Therefore, in view of existence of the aforesaid alternative remedy, I am of the view that this Court is not inclined to exercise its extraordinary power under Article 226 of the Constitution of India. Accordingly, this writ application fails and is dismissed. The petitioner is at liberty to approach the Customs, Central Excise and Service Tax Appellate Tribunal by filing an appeal against the order sought to be impugned in this writ petition within a period of six weeks from date of receipt of a copy of this order and if the petitioner approaches with an appeal, the Tribunal is directed to entertain the appeal without insisting upon the limitation aspect and decide the same in accordance with law without being influenced by any observation in this order. No costs. Consequently, connected MP is closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

Suk

To

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

2. The Inquiry Officer/
Deputy Commissioner of Customs,
Custom House, No.60, Rajaji Salai,
Chennai-600 001.

+1cc to Mr.T.Chandrasekaran, Advocate, S.R.No.35695

W.P.NO.28921 OF 2014

VSN(CO)
CA(10/08/2015)