IN THE HIGH COURT OF JUDICATURE AT MADRAS

DELIVERED ON : 11.06.2015
RESERVED ON : 01.04.2015

CORAM

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P. Nos. 7188 & 7189 of 2015
and
M.P. Nos.1 & 1 of 2015

Reserved on 01.04.2015

M/s.Sanco Trans Limited
Rep by its Whole Time Director
Mr.U.Udayabhaskar Reddy
Old No.90, New No.46, Moore Street,
Chennai - 1. ....Petitioner in both WPs

Vs

The Commissioner of Customs
Sea Port/Imports
Customs House,
No.33, Rajaji Salai,
Chennai - 600 001. ....Respondent in both WPs

PRAYER IN WP.7188 OF 2015: Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records pertaining to F.No.R.-146/CHA on the file of the respondent and quash the show cause notice F.No.R-146/CHA dated 05/03/2015.

PRAYER IN WP.7189 OF 2015: Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondent, to renew the Customs Broker Licence of the petitioner based on its application dated 09/01/2015.

For Petitioner : Mr.T.V.Ramanujam, Senior Counsel
for Mr.Manoj Sreevalsan

For Respondent : Mr.V.Sundareswaran

COMMON ORDER

Writ Petition in W.P.No.7188 of 2015 has been filed praying for the issuance of Writ of Certiorari, calling for the records pertaining to F.No.R.-146/CHA on the file of the respondent and quash the show cause notice F.No.R-146/CHA dated 05/03/2015.

2. Writ petition filed in W.P.No.7189 of 2015 has been filed praying for the issue a Writ of Mandamus directing the respondent, to renew the Customs Broker Licence of the petitioner based on its application dated 09/01/2015.

3. The petitioner has come forward with the present Writ Petition WP 7188 of 2015, challenging the show cause notice dated 05.03.2015 in F.No.R-46/CHA issued by the respondent, in and by which, the respondent has called upon the petitioner to show cause as to why the licence issued to the petitioner 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 Customs Brokers Licensing Regulations, 2013 , (in short "CBLR, 2013"), for their failure to comply with the provisions of the Regulations 2013.

4. During the course of investigation conducted by the Special Intelligence and Investigation Branch, (SIIB), Custom House, Chennai, in respect of goods covered by the Bill of Entry No.6470672 dated 07.04.2012, which were imported by M/s. Mos Metro India and cleared by the petitioner, it was found that the Customs Broker, the petitioner herein had attempted to assist and clear the impugned goods at a much lower value, to evade payment of applicable duties by suppressing the Load Port Chartered Engineer's Certificate and original purchase invoices of the subject machineries, which would have resulted a possible revenue loss to the Government, to the tune of Rs.1.05 crores.

5. According to the respondent, prima facie, it appeared that the Customs Broker, the petitioner herein, had failed in discharging their obligations as Customs Broker, required under Regulations 11 (d), 11(e), 11(f) and 11(j) of CBLR, 2013. Therefore in such circumstances, the respondent thought it fit to suspend the licence

of the petitioner, since if the petitioner was allowed to operate, it would be detrimental to the interest of the revenue and accordingly by invoking Regulation 91 of CBLR, 2013, the respondent by proceedings dated 13.06.2012, has suspended the licence of the petitioner.

6. Aggrieved by the said suspension order, the petitioner had filed a Writ Petition in W.P. No.15544 of 2012. The said Writ Petition came to be disposed of by order dated 31.01.2015 by this Court, directing the respondent to conduct the procedural enquiry as contemplated under the relevant rules by giving fair opportunity to the petitioner. In the meantime, it appears that the period of validity of licence of the petitioner which is of a ten year tenure, came to be expired on 24.02.2015. Consequently, the petitioner filed an application for renewal of licence on 09.01.2015, along with requisite renewal fee and connected documents. But, there was no response from the respondent. However, the petitioner had received the impugned show cause notice on 06.03.2015. Hence Writ Petition in W.P.7188 of 2015.

7. The petitioner has also come forward with another Writ Petition in W.P.No.7189 of 2015 praying for the issuance of Writ of Mandamus, to direct the respondent to renew the Customs Broker licence of the petitioner based on its application dated 09.01.2015.

8. Challenging the impugned show cause notice, Mr.T.V.Ramanujam, learned senior counsel appearing for the petitioner would contend that the impugned show cause notice cannot be sustained since it has been issued by the respondent in violation of the period of limitation prescribed under Section 20(1) of CBLR, 2013, which insisted that the show cause notice should be issued within 90 days from the date of receipt of the offence report from the Investigating Agency. He pointed out that the impugned show cause notice has been issued on 05.03.2015, after expiry of 3 years from the date of alleged offence report of the SIIB. He also contended that the petitioner has not violated any of the regulations and it is not appropriate on the part of the respondent, in not entertaining the renewal application which has been filed by the petitioner as early as on 09.01.2015. In support of his contentions, the learned senior counsel relied upon the decisions of this Court in "MKS Shipping Agencies Pvt. Ltd., Vs. The Commissioner of Customs, Tuticorin in W.P.(MD) No.16351 of 2012 and in "The Commissioner of Customs (Sea port Import) Vs. The Customs Excise and Service Tax Appellate Tribunal" reported in 2014-3-L.W.632.

9. Heard both sides and perused the records.

10. As per Regulation 18 of CBLR, 2013, the respondent-Commissioner of Customs, has empowered to revoke the licence of a Customs Broker and order for forfeiture of part or whole of security, or impose penalty not exceeding Rs.50,000/-. In order to probe into the charges levelled against the petitioner, the show cause notice dated 05.03.2015 has been issued by the respondent, by appointing an Enquiry Officer, calling upon the petitioner to file written statement of defence and objections thereof. Challenging the same, the petitioner has come forward with the present writ petitions.

11. Although, ordinarily Writ Court may not exercise its discretionary jurisdiction in entertaining the Writ Petition, questioning the notice of show cause, unless the same inter-alia appears to have been without jurisdiction. In the present case, the main contention canvassed by the learned senior counsel is that the impugned show cause notice has been issued in contravention of the Regulation 20(1) of CBLR, 2013.

12. In exercise of the powers conferred by sub-section (2) of Section 146 of the Customs Act, Central Board of Excise and Customs issued a set of Regulations known as Customs House Agents Licensing Regulations 2004. Under the said Regulation, no person shall carry on business as a Customs House Agent relating to the entry or departure of a conveyance or the import or export of goods at any Customs Station unless such person holds a licence granted under the Regulations. Regulation 20 empowers the Commissioner of Customs to revoke the licence of an agent and order the forfeiture of the whole or part of the security, on certain specific grounds stated in Clauses (a) (b) and (c) of sub-Regulation (1) of Regulation 20. The procedure for suspending or revoking licence under Regulation 20 is prescribed in Regulation 22.

13. In other words, the power to suspend or revoke the licence is to be traced to Regulation 20 and procedure for suspending or revoking the licence is to be found in Regulation 22. The power of the Respondent to pass the impugned order is traceable to Regulation 20 and since there is no dispute in this case with regard to the same, it is enough if we take note of Regulation 22. Hence Regulation 22 is extracted as follows:-

> "22. Procedure for suspending or revoking licence under Regulation 20:-
>
> (1) The Commissioner of Customs shall issue a notice in writing to the Customs House Agent within ninety days from the date of receipt of offence report, stating the grounds on which it is proposed

> to suspend or revoke the licence and requiring the said Customs House Agent to submit within thirty days to the Deputy Commissioner of Customs or Assistant Commissioner of Customs nominated by him, a written statement of defense and also to specify in the said statement whether the Customs House Agent desires to be heard in person by the said Deputy Commissioner of Customs or Assistant Commissioner of Customs.

14. Therefore, on a perusal of the above, it is explicit that the show cause notice under Regulation 20(1) is required to be issued within 90 days from the date of receipt of the offence report as prescribed under Regulation 22. In the present case, the offence report was received on 29.08.2012 and the show cause notice was issued on 05.03.2015, by which, it is clearly revealed that it was issued beyond the period stipulated in Regulation 22(1). Therefore, when the impugned show cause notice has been issued beyond the statutory period, as rightly pointed out by the learned senior counsel for the petitioner that the same cannot be sustained for want of jurisdiction.

15. In similar circumstances, this Court in "M/s.MKS Shippping Agencies Pvt. Ltd.," (cited supra) has considered the same issue and held that, issuing show cause notice beyond the period of 90 days as prescribed under Regulation 22(1) cannot be sustained. In paragraph 5 and 6 of this Court order dated 04.01.2103 are found to be relevant and are extracted hereunder :

> "5.The proceedings impugned in the Writ Petition is only a show cause notice. Therefore, under normal circumstances, the same cannot be very lightly interfered with, as the petitioner would always have a remedy, even if an adverse order is passed finally. But, under exceptional circumstances, such as want of jurisdiction, etc., even a show cause notice can be interfered with in a Writ Petition.
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> 6.In view of the limited scope of the jurisdiction of this Court, as against a show cause notice, the only point on which, the petitioner restricts their claim, is that the show cause notice was not issued, within a period of 90 days from the date of receipt of the offence report, as required by Regulation 22 (1) of the 2004 Regulations.

16. Having regard to the above and in view of the foregoing discussion, I am of the view that the impugned show cause notice is liable to be set aside and accordingly it is set aside.

17. In view of setting aside the impugned show case notice dated 05.03.2015, there is no impediment for the respondent to renew the Customs Broker Licence of the petitioner in terms of Regulation 9(1) of the CBLR, 2013.

In the result, the Writ Petitions are allowed. The impugned show cause notice dated 05.03.2015 is hereby set aside. The respondent is directed to renew the Customs Broker Licence of the petitioner by considering his application dated 09.01.2015, if it is in order, in accordance with law, within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected MPs are closed.

Sd/-
Asst. Registrar

/true copy/

Sub Asst. Registrar.

suk

To

The Commissioner of Customs

Sea Port/Imports

Customs House,

No.33, Rajaji Salai,

Chennai - 600 001.

+4ccs to Mr.P.Sidharthan,Advocate SR.No.28669, 28670

+2ccs to Mr.V.Sundarareswaran, Advocate SR.No.28753

W.P. Nos.7188 & 7189 of 2015

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