In the High Court of Judicature at Madras

Dated : 02.6.2016

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.1923 of 2015
&
MP.No.1 of 2015

M/s.Sri Balaji Freight Forwarders,
rep.by its Partner Mr.G.Narayanan ...Petitioner

Vs.

1.Union of India, rep.by its Secretary,
Ministry of Finance, Department of
Revenue, North Block, New Delhi-1.

2.The Central Board of Excise &
Customs, rep.by its Chairman,
Ministry of Finance, Department of
Revenue, North Block, New Delhi-1.

3.The Commissioner of Customs
(Chennai VIII Commissionerate)
Custom House, Chennai-1. ...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the third respondent namely F.No.CHN R-743-CHA and quash the order dated 26.11.2014.

For Petitioner :Mr.S.Murugappan
For Respondents :Mr.S.Haja Mohideen Gisthi, SCGSC

ORDER



Heard both. By consent, the writ petition itself is taken up for final disposal.

2. This writ petition has been filed by the petitioner, who is the holder of a regular licence issued under the Customs Brokers Licensing Regulations, 2013 and the order impugned in this writ petition is an order of prohibition issued invoking the provisions of Regulation 23 of the said Regulations.

3. The case of the petitioner is that the Licensing Authority namely the Tuticorin Commissionerate had issued a show cause notice and passed an order on 14.8.2015 with respect to the same allegations, based on which, the impugned order of prohibition was passed and in the said order, the petitioner was imposed a penalty of Rs.50,000/-. Therefore, it is submitted that the impugned order of prohibition should be quashed.

4. The learned Senior Central Government Standing Counsel appearing for the respondents submitted that the interpretation given by the petitioner may not be correct in the light of the decision of the Hon'ble Division Bench of this Court in M/s.Cappithan Agencies Vs. Commissioner of Customs, Chennai [W.A.No.13 of 2016 dated 22.2.2016] wherein the Hon'ble Division Bench held that the object of keeping a separate power for the Commissioner of Customs to impose a limited prohibition, is to ensure that even in cases where they do not contemplate an inquiry, an order of suspension can be passed in relation to one or more sections of the Customs Station and that the only protection for the broker in such cases is to contend that there was no violation of Regulation 11 or that he had not failed in any of the obligations imposed under Regulation 11. Unless this is shown, the prohibition under Regulation 23 cannot be said to be co-terminus with the final order.

5. Though the above submission has been made, the learned Senior Central Government Standing Counsel for the respondents has produced written instructions given by the Assistant Commissioner of Customs, Customs Broker Section datted 1.6.2016. These written instructions had been addressed to the Deputy Commissioner of Customs, Legal-Sea and they are extracted as follows :

"Note:

Sub : W.P.Nos.1922 and 1923 of 2015 filed by
M/s.Balaji Freight Forwarders, Chennai
before the Hon'ble High Court of Madras - Regarding.

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Please refer to your Note dated 12.10.2015 on the above subject vide F.No.C1/23/2015-Legal Sea.

In this connection, it is pertinent to mention here that the case has already been finalised by the Parent Commissionerate viz. Tuticorin by issuing a show cause notice and subsequent issue of Order-in-

Original wherein the Customs Broker was imposed a penalty of Rs.50,000/- and the same has been paid by the Customs Broker at Tuticorin Commissionerate.

Based on the above, Commissioner-VIII has given approval for lifting of prohibition imposed on the customs broker at Chennai Commissionerate. Since the stay vacation petition was preferred against the interim stay order dated 28.4.2015 granted by the Hon'ble High Court of Madras against the prohibition order issued by Chennai Commissionerate and subsequently, the case has been finalised by the Parent Commissionerate viz. Tuticorin Commissionerate by imposition of penalty on the customs broker, file was submitted to Commissioner-VIII for orders as to whether to proceed with filing of stay vacation petition by the Department or not.

Commissioner-VIII has opined in the file as follows:

'As the matter has attained finality, no need to proceed further'.

Accordingly, it was decided by Commissionerate-VIII not to proceed with filing of stay vacation petition. Hence, it is informed vide this Note that filing of stay vacation petition in respect of W.P.Nos.1922 & 1923/2015 filed by M/s.Sri Balaji Freight Forwarders, Chennai may be treated as dropped/withdrawn, based on the facts and circumstances explained above.

A copy of extract of the relevant portion from the concerned file is enclosed for ready reference."



6. In the light of the decision taken by the Department to drop or withdraw the impugned proceedings, nothing further would survive pursuant to the impugned proceedings and based on the decision taken by the respondents referred supra, the writ petition is allowed and the impugned order is quashed. The legal issue, which has been raised by the Department as to whether the order of prohibition would be co-terminus with that of the order

issued after issuance of the show cause notice, is left open. No costs. Consequently, the above MP is closed.

RS

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Secretary to Union of India,
Ministry of Finance, Department of Revenue,
North Block, New Delhi-1.

2.The Chairman, Central Board of Excise & Customs,
Ministry of Finance, Department of Revenue,
North Block, New Delhi-1.

3.The Commissioner of Customs (Chennai VIII Commissionerate)
Custom House, Chennai-1.

+ 1 cc to M/s.S.Murugappan, Advocate Sr 29227

+ 1 cc to M/s.S.Haja Mohideen Gisthi Advocate Sr 29701

KR/10/6/16

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&
MP.No.1 of 2015