IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:13.07.2016

Date of Reserving the Order	*Date of Pronouncing the Order*
11.07.2016	**13.07.2016**

Coram

The Hon'ble Mr.Justice **T.S. SIVAGNANAM**

W.P.Nos.19312 & 19313 of 2016

M/s.Sea Coral Clearing & Forwarding
Old No.80, New No.76, First Floor,
Armenian Street, Chennai – 600 001.
By its Proprietrix Smt.B.Chandrakala
... Petitioner in both W.Ps.,

Vs

The Commissioner of Customs
Chennai VIII Commissionerate,
60, Rajaji Salai, Custom House,
Chennai – 600 001. ... Respondents in both W.Ps.,

Prayer in W.P.No.19312 of 2016 :-These Writ Petitions are filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari to call for the records of the respondent connected with order in original No.47394/2016, dated 30.05.2016 in F.No.CHN/R-164/2011-CHA, ordering continuation of the suspension of the customs broker licence granted to her concern M/s.Sea Coral Clearing & Forwarding (PAN No.AKAPC2564R), in exercise of the power conferred on the said respondent under Regulation 19(2) of the Customs Broker Licensing Regulations, 2013 (CBLR for short), and to quash the same, holding the same to have been passed without jurisdiction and without following the due process of law as contemplated under the CBLR, 2013 and in gross violation to the fundamental rights guaranteed to the petitioner under the Constitution.

Prayer in W.P.No.19313 of 2016 :-These Writ Petitions are filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari to call for the records of the respondent connected with order in F.No.CHN/R-164/2011-CHA, dated 05.05.2016 suspending the license No.R-164/2011-CHA of the petitioner concern, M/s.Sea Coral Clearing & Forwarding (PAN No.AKAPC2564R), with immediate effect under Regulation 19(1) of the Customs Broker Licensing Regulations, 2013 and to quash the same, for having passed the said order without jurisdiction and in utter violation to the principles of natural justice, and in gross violation to the fundamental rights guaranteed to the petitioner under the Constitution and for not following the ratio held in the judgments passed by the Court on the identical issue.

For petitioner .. Mr.N.Viswanathan

For Respondents .. Mr.V.Sundareswaran Senior Panel counsel

C O M M O N O R D E R

The petitioner in these Writ Petitions has challenged the order-in-original passed by the respondent, dated 30.05.2016, ordering continuation of the suspension of the Customs Broker Licence granted to the petitioner in exercise of power conferred under Regulation No.19(2) of the Customs Broker Licensing Regulations, 2013, (hereinafter referred to as the 'Regulation').

2. The following facts would suffice to consider the relief sought for in these Writ Petitions. An offence report was received by the Principal Commissioner of Customs (General), Mumbai, from the Central Intelligence Unit, JNCH, Nhava Sheva, dated 23.12.2015, stating about the role played by the petitioner, a customs broker in attempted clearance of 10 export consignments of M/s.Redingote Overseas and M/s.Tulsi Impex to claim inadmissible drawback. The Principal Commissioner of Customs, Mumbai passed an order dated 13.04.2016, prohibiting the petitioner from working in all sections of the Mumbai Customs Zones I, II & III, with immediate effect, with a further direction to the petitioner to immediately surrender the

customs passes issued to them/their employees by Custom Broker Section. In the same order, the petitioner was offered an opportunity of post-decisional personal hearing by giving liberty to the petitioner to submit a written representation. The said order was forwarded to the respondent therein for necessary action in terms of Regulation 20 and/or 22 of the Regulation as per the instruction contained in the Board Circular No.9/2010-Customs, dated 08.04.2010. Copy of this order was received by the office of the respondent on 22.04.2016, after which the respondent passed an order suspending the petitioner's customs broker licence invoking the power under Regulation 19(1) of the Regulation. An opportunity of personal hearing was granted in terms of Regulation 19(2). The petitioner appeared for the personal hearing and filed their written submissions. The respondent has passed the order dated 30.05.2016, continuing the suspension of the petitioner's Customs Broker Licence until further orders. This order is impugned in W.P.No.19312 of 2016.

3. The learned counsel appearing for the petitioner submitted that the Principal Commissioner of Customs, Mumbai, while forwarding his order dated 13.04.2016 to the respondent for necessary action in terms of Regulation 20 and/or 21 of the Regulation, but the

respondent erroneously passed an order dated 05.05.2016. under Section 19(1), which is impugned in W.P.No.19313 of 2016, was subsequently, confirmed by order dated 30.05.2016, impugned in W.P.No.19312 of 2016. Therefore, it is submitted that the impugned orders are not tenable. It is further submitted that the respondent while passing the impugned order in paragraph 16 therein, erred in making an observation that there is an typographical error in the order passed by the Principal Commissioner, Mumbai that instead of mentioning Regulation Nos.19 & 20, it has been mentioned as Regulation Nos.20 & 22 and this finding has resulted in gross miscarriage of justice. Further, it is submitted that the order of suspension passed by the respondent to suspend the licence, dated 05.05.2016, beyond the period of 90 days is *ab-intio void* and contrary to the provisions of the Regulation. The learned counsel after referring to Regulation 19(1), submitted that such power may be exercised in appropriate cases, where immediate action is necessary and there is no such immediate need for placing the petitioner's licence under suspension and the respondent mis-directed itself in invoking such power. In support of his contentions, the learned counsel relied on the decision of the High Court of Calcutta in the case of ***N.C.Singha & Sons vs. UOI*** reported in ***1998 (104) ELT 11 (Cal)*** and the judgment of the Hon'ble Division Bench of the Delhi High Court in the case of ***Schankar Clearing & Forwarding vs. CC, Import*** reported in ***2012 (283) ELT 349 (Del).***

4. The learned Senior Standing counsel appearing for the respondent submitted that the action initiated by the respondent is perfectly legal and is in order, as an enquiry is pending against the petitioner initiated by the Mumbai Customs and the order of suspension was passed in exercise of powers under Regulation 19(1) of the Regulation and after affording an opportunity to the petitioner in terms of Regulation No.19(2), the order of suspension has been continued and as against the impugned order, the petitioner has an appellate remedy before the CESTAT and without availing the same, the petitioner cannot approach this Court by way of these Writ Petitions. Further the learned counsel submitted that exercise of the discretion by the Commissioner suspending the licence of a Customs Broker should not be interfered with by this Court in exercise of its powers conferred under Article 226 of the Constitution and this Court should not interdict the proceedings at this stage. In support of his contention, the learned counsel referred to the decisions in the cases of ***Sindhu Cargo Services Ltd., vs. Commissioner of Customs,***

Coimbatore reported in ***2006 (196) E.LT., 51 (Tri.,-Chennai); Commissioner of Customs, Coimbatore vs. Sindhu Cargo Services Ltd.,*** reported in ***2007 (219) E.L.T., 87 (Mad); Sri Kamakshi Agency vs. Commissioner of Customs, Madras,*** reported in ***2001 (129) E.L.T., 29 (Mad); Commissioner of Customs, (General) vs. Worldwide Cargo Movers.,*** reported in ***2010 (253) E.L.T., 190 (Bom);*** and the decision of the Hon'ble Division Bench of this Court in the case of ***M/s. Cappithan Agencies vs. The Commissioner of Customs,*** in ***W.A.No.13 of 2016, dated 22.02.2016***, and in the case of ***D.V.R., Freight Forwarders Pvt., Ltd., vs. Commissioner of Cus., (Imports), Chennai,*** reported in ***2015 (326) E.L.T., 108 (Mad).*** The learned counsel also referred to a recent decision of the High Court of Calcutta in the case of ***Sri Aditya Ganguly vs. UOI & Ors.,*** reported in ***2016-TIOL-876-HC-KOL-CUS.***

5. Heard Mr.N.Viswanathan, learned counsel appearing for the petitioner, Mr.V.Sundareswaran, learned Senior Standing counsel appearing for the respondent and perused the materials placed on record.

6. The order impugned in these Writ Petitions are orders suspending the petitioner's Customs Broker Licence. The respondent invoked its power under Regulation 19(1) and placed the petitioner's licence under suspension, thereafter offered an opportunity of personal hearing to the petitioner in terms of Regulation 19(2) and confirmed the order of suspension. These orders are impugned in these Writ Petitions. The learned counsel for the petitioner submitted that the impugned orders are erroneous and the correctness of the same may be examined by this Court, without relegating the petitioner to invoke the appeal remedy.

7. Broadly two issues would arise for consideration in these cases namely whether the respondent was justified in suspending the petitioner's licence invoking the power under Regulation 19(1) of the Regulation, when the Principal Commissioner of Customs, Mumbai had forwarded his order, dated 13.04.2016, for necessary action under Regulation 20 and/or 22 of the Regulations. Secondly, as to whether the respondent was right in continuing the order of suspension after affording an opportunity to the petitioner in terms of Regulation 19(2) of the Regulation.

8. It may be true that the Principal Commissioner of Customs, Mumbai, communicated his order dated 13.04.2016, to the respondent for necessary action in terms of Regulation No.20 and/or 22 of the Regulation. According to the respondent, the order should have read as Regulations 19 & 20 and not Regulations 20 & 22 and it is a typographical error.

9. Be that as it may, the order passed by the Principal Commissioner of Customs, Mumbai is not an order empowering the respondent to initiate action under the Regulations. The power to suspend a Customs Broker Licence is conferred on the respondent in terms of the Regulation. Therefore, even if the Commissioner of Customs, Mumbai, has not referred to any of the provisions of the Regulations, yet, the respondent was well within his jurisdiction to exercise all powers under the Regulations. Therefore, quoting of Regulation No.20 or 22 is of no consequence and that can hardly be a ground to test the correctness of the impugned order. Therefore, such contention raised by the petitioner stands rejected.

10. On the question of limitation, it is an admitted fact that the offence report submitted by the Central Intelligence Unit, JNCH, dated

23.12.2015, has not been communicated to the respondent till date and only the order passed by the Principal Commissioner, Mumbai, dated 13.04.2016 has been communicated, in which there is a reference to the offence report. Therefore, with this material, the respondent had sufficient power to suspend a licence invoking Regulation 19(1) of the Regulations. Therefore, the impugned order cannot be tested on the ground of limitation.

11. A close reading of Regulation 19 would show that notwithstanding the power of revocation of licence or imposition of penalty under Regulation No.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. Admitting an enquiry is pending against the petitioner. Therefore, in the exercise of the discretion conferred on the Commissioner of Customs, the respondent has invoked his power and placed the petitioner's licence under suspension, in such circumstances should this Court interfere with exercise of such discretion.

12. The learned counsel for the petitioner referred to the decision in the case of ***N.C.Singha & Sons vs. UOI*** (supra), and

submitted that the minimum that is required by the Commissioner to enable him to exercise such power of immediate suspension, is the spelling out of the circumstances in the order warranting the need to take such immediate action and actually say that immediate action is indeed required in the matter. On facts, in the said case, the Court found that in the impugned order therein, the expression immediate action itself was missing. The decision in ***N.C.Singha & Sons vs. UOI*** (supra), was taken note of by the High Court of Calcutta in the recent decision in the case of ***Sri Aditya Ganguly vs. UOI & Ors.,*** (supra), wherein after referring to the said decision, it was pointed out that the Division Bench in that case read the order of suspension not to indicate any reasons why it was immediately necessary to suspend the licence, whereas in the case before the Court, the impugned order of suspension refers to the orders of punishment and the immediate need for suspending the petitioner's licence is evident from the order. It was pointed out that the suspension is the more important limb of the relevant expression and the perception of the necessity must be left to the officer entitled to exercise such authority. Further, it was pointed out that an order of suspension cannot be challenged in the extra-ordinary jurisdiction as being without jurisdiction by calling upon the court to take a different view on the ground of necessity; if the prescribed authority perceives the suspension to be necessary, it has to be accepted at face value and, though the same can be questioned in the post-decisional hearing, it cannot be subjected to a judicial review unless it is palpably absurd. I am in respectful agreement with the views expressed in ***Sri Aditya Ganguly vs. UOI & Ors.,*** (supra), while considering the facts and circumstances of the instant case.

13. As pointed out, there is an enquiry initiated against the petitioner by the Mumbai Customs and prohibitory order has been passed against the petitioner under Regulation 23 and he has been given a post decisional hearing and the matter is under consideration. The respondent while suspending the petitioner's licence invoking power under Regulation 19(1), has recorded a finding that a clear *prima facie* case exists against the petitioner and if they are allowed to continue to operate, it would be determintal to the interest of revenue and therefore, it is necessary to take immediate action against the petitioner to prevent them from further misuse of the Customs Broker Licence. In the post decisional hearing given to the petitioner, the petitioner has been fully heard and he has submitted his written submissions also.

14. The respondent after hearing the petitioner and taking into consideration of the written submissions made by the petitioner pointed out that the dismissal of one of the employees of the petitioner does not grant immunity to the petitioner from the alleged offence and that the order suspending the petitioner's Customs Broker Licence was passed on 05.05.2016, immediately after the order of the Principal Commissioner of Customs, Mumbai was received by the office of the respondent on 22.04.2016. Further, the respondent has rightly distinguished the decisions referred to by the petitioner in the case of *The Commissioner of Customs (Imports), & Ors., vs. A.M.Ahmed & Co., in W.A.No.371 of 2015, dated 17.06.2015*, stating that the order which has been passed against the petitioner is an order suspending the licence and it is not a notice under Regulation No.20. The order impugned is a speaking order and no error can be attributed to the same. The reasons assigned are cogent and therefore, this Court does not propose to interfere with the exercise of the power of licensing authority under Regulation No.19.

15. In the light of the above, the Writ Petition is dismissed with a direction to the respondent to initiate further action in terms of

Regulation 20 of the Regulation as stated in the impugned order and conclude the proceedings within a period of four months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

13.07.2016

pbn
Index :Yes/No
Internet :Yes/No

To

The Commissioner of Customs
Chennai VIII Commissionerate,
60, Rajaji Salai, Custom House,
Chennai – 600 001.

T.S.SIVAGNANAM, J.
pbn

Pre-Delivery O r d e r in
W.P.Nos.19312 & 19313 of 2016

13.07.2016