IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22.02.2016

Coram:

The Hon'ble Mr.Justice V.RAMASUBRAMANIAN

and

The Hon'ble Mr.Justice N.KIRUBAKARAN

Writ Appeal No.13 of 2016

and

C.M.P.No.832 of 2016

M/s. Cappithan Agencies,
rep. by its Authorized Signatory
Mrs.Liza Sathish,
No.36, Kamaraj Street,
Meenambakkam, Chennai. ... Appellant

Versus

The Commissioner of Customs,
Chennai-VIII Commissionerate,
Custom House, No.60, Rajaji Salai,
Chennai - 600 001. ... Respondent

Writ Appeal filed under Clause 15 of the Letters Patent, against the Order dated 13.10.2015 passed by a learned single Judge of this Court in W.P.No.16832 of 2015. Writ petition is filed under Article 226 of the constitution of India praying for the issue of a writ of certiorari to call for the records pertaining to the order - in Original No.38294/2015 dated 29.03.2015 by respondent and quash the same.

For Appellant : Mr.Hari Radhakrishnan

For Respondent : Mr.T.Chandrasekaran

JUDGMENT

(Made by V.Ramasubramanian,J)

This Writ Appeal arises out of an order passed by the learned Judge, dismissing a writ petition filed by the appellant, challenging the prohibition imposed upon them in terms of Regulation 23 of the Customs Brokers Licensing Regulations, 2013.

2. We have heard Mr.Hari Radhakrishnan, learned counsel appearing for the appellant and Mr.T.Chandrasekaran, learned counsel appearing for the respondent.

3. The appellant is a Licensed Customs Broker bearing Licence No. 102, issued by the Cochin Customs Commissionerate in terms of Regulation 9(1) of Customs House Agents Licensing Regulations, 2004. The said licence was extended to Chennai Commissionerate under Regulation 9(2) of the Regulations.

4. In July 2013, an offence report was received, alleging that a company by name M/s. Antonie and Becouerel Organic Chemical Company had filed 33 Bills of Entry. Out of them, 3 were filed by the appellant.

5. Investigation revealed that the Importer had cleared raw-materials, which are used to manufacture drugs and pharmaceuticals without proper import licence under the Drugs and Cosmetics Act, 1940 and without clearance from the Assistant Drug Controller.

6. In view of the aforesaid alleged violations, the Commissioner of Customs (Sea Port and Import), Chennai, passed an Order in Original dated 12.7.2013, prohibiting the appellant from working in any section of Chennai Customs Commissionerate and Customs Stations under the jurisdiction of Chennai Customs Zone.

7. Therefore, the appellant came up with a writ petition in W.P.No.19670 of 2013 as against the prohibition order dated 12.7.2013. The said writ petition was disposed of on 24.9.2013, giving liberty to the appellant to submit a representation against the prohibition order. It was at that stage, a show cause notice dated 24.10.2013 was issued by the Cochin Commissionerate.

8. After considering the representation of the appellant, the Chennai Commissionerate passed an order dated 12.11.2013, directing continuation of the prohibition of the appellant, with

a rider that a final decision will be taken after the completion of the Inquiry Proceedings initiated by the Commissioner of Customs, Cochin.

9. As we have pointed out earlier, the Commissionerate of Cochin issued a show cause notice dated 24.10.2013. The appellant gave a reply, after which, an inquiry was held. Eventually, the Commissioner of Customs, Cochin passed a final order dated 7.4.2014, imposing only a penalty of Rs.10,000/-, after holding the appellant guilty of violations.

10. In the meantime, the appellant challenged the prohibition order issued by the Commissionerate of Chennai, before the Customs, Excise and Service Tax Appellate Tribunal. By the time the said appeal in Appeal No.C/ 40192/2014 came up for hearing before the CESTAT, the Cochin Commissionerate had already passed a Final Order dated 7.4.2014. Therefore, the CESTAT allowed appeal on 15.10.2014, remitted the matter back to the Adjudicating Authority for passing necessary order after considering the order of Commissioner of Customs, Cochin.

11. Pursuant to the said order, the Chennai Commissionerate passed a fresh Order in Original dated 29.5.2015, directing the continuation of the prohibition, without any time limit. Aggrieved by the said order, the appellant came up with a writ petition in W.P.No.16832 of 2015. The same having been dismissed by the learned single Judge, the appellant is before us.

12. The main grievance of the appellant is that once the proceedings initiated by the Cochin Commissionerate had resulted only in the imposition of a penalty of Rs.10,000/-, the order of the Chennai Commissionerate prohibiting the appellant from operating within the area of Chennai Commissionerate, cannot continue indefinitely. The Commissioner of Customs, Cochin was the Licencing Authority and once he had passed final order under Regulation 22 of the Regulations, imposing a mere penalty, the Commissioner of Customs, Chennai cannot, according to the appellant, impose a greater penalty by invoking the power under Regulation 22 of the Regulations.

13. In support of the above contention, the learned counsel for the appellant relies upon the decision of the Kerala High Court in Ujwal International Limited vs. Commissioner of Customs, Kochi [2015 (319) E.L.T. 490] and two decisions of the Mumbai Bench of the Tribunal, one in Excel India Private Limited v. Commissioner of Customs (G), Mumbai-I [2008 (230) E.L.T. 451] and another in ASA Enterprises v. Commissioner of Customs (General), Mumbai [2012 (286) E.L.T. 743].

14. We have carefully considered the above submissions.

15. A careful look at the Customs Brokers Licensing Regulations, 2013 would show that no person is entitled to carry on business as a Customs Broker, 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 these Regulations. The procedure for grant of licence, is stipulated in Regulations 4 to 7. Under Regulation 7(1), the Commissioner of Customs is empowered to grant a licence in Form B to a person, who had passed the oral examination within two months of declaration of results. Under Regulation 7(2), a person, who is granted a licence under Sub-Regulation (1), shall be eligible to work as a Customs Broker in all Customs Stations subject to intimation in Form C to the Commissioner of Customs of the Customs Station where he intends to transact business.

16. Regulation 18 deals with the power of the Commissioner to revoke the licence or to impose penalty. Regulation 19 speaks about suspension of licence. The procedure for revoking licence or for imposing penalty is stipulated in Regulation 20.

17. Interestingly, Regulation 22 also makes a Customs Broker liable to penalty upto Rs.50,000/-, in case he contravenes any provisions of the Regulations or fails to comply with any provisions contained in the Regulations, despite the fact that Regulation 18 itself speaks about the penalty and Regulation 20 lays down the procedure for imposition of penalty.

18. Similarly, Regulation 23 speaks about the power of the Commissioner of Customs to prohibit a Customs Broker from working in any one or more sections of the Customs Station, under certain circumstances, despite the fact that Regulation 19 deals with the suspension of licence independently.

19. Therefore, it must be remembered that any interpretation to be given to Regulation 22, should be in tune with the object sought to be achieved by having a separate provision under Regulation 18. Likewise, interpretation to be given to Regulation 23, should also be in tune with the interpretation to be given to Regulation 19. An interpretation that will eclipse Regulation 22 by telescoping the same into Regulation 18 cannot be accepted.

20. It will be useful to read at this stage Regulations 19 and 23 together:

Regulation 19	Regulation 23
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:	Prohibition - Notwithstanding anything contained in these regulations, the Commissioner of Customs may prohibit any Customs Broker from working in one or more sections of the Customs Station, if he is satisfied that such Customs Broker has not fulfilled his obligations as laid down under regulation 11 in relation to work in that section or sections.

21. A careful look at Regulations 19 and 23 would show that what is contemplated under Regulation 19 is the suspension of a licence, in contemplation of or pending inquiry into the alleged violations committed by a Customs Broker. As a consequence, the order of suspension passed under Regulation 19 would naturally be co-terminus with a final order passed under Regulation 20. Additionally, the Customs Broker can be prohibited from exercising any of the rights conferred upon him in the licence, once an order of suspension is passed under Regulation 19.

22. In contrast, what is sought to be prohibited under Regulation 23, is only limited in nature. An order passed under Regulation 23 will prohibit a Customs Broker only from working in one or more sections of the Customs Station. This is why Regulation 23 does not speak either about the licence or about the pendency or contemplation of an inquiry. To put it differently, the contemplation of an inquiry or the pendency of an inquiry is a sine quo non for invoking the power of suspension under Regulation 19. But, it is not a sine quo non for invoking the power under Regulation 23. The only requirement for invoking Regulation 23 is to see whether the Customs Broker has failed to satisfy his obligations as laid down in Regulation 11 in relation to his work in that section or sections.

23. If we have a look at Regulation 11, it can be seen that the same lays down at least about 15 obligations, as statutorily imposed upon a Customs Broker. Whenever there is a violation of any of these obligations, it is open to the Commissioner of Customs to invoke the power under Regulation 23, irrespective of whether an inquiry is contemplated or pending and irrespective of what happens to the licence under Regulation 20.

24. Keeping the statutory scheme in mind, if we look at the decision of the Kerala High Court, it can be seen that the learned Judge of the Kerala High Court, with great respect, understood the power under Regulation 23 to be equivalent to the power under Regulation 19. The suspension of a licence ordered under Regulation 19 pending inquiry, was treated as akin to an order of prohibition passed under Regulation 23. Therefore, the decision of the High Court of Kerala, with great respect, cannot be accepted.

25. Both the decisions of the Mumbai Bench of the CESTAT, have also fallen into the same track. The Tribunal has also understood the scope of the power under Regulation 23 to be lesser than or at least equivalent to the power of suspension under Regulation 19.

26. The issue can be looked at from another angle also. Suppose the order of prohibition under Regulation 23 can be invoked only in contemplation of an inquiry or during the pendency of an inquiry, there is no necessity to have Regulation 23 at all. If the interpretation given to the power under Regulation 23 is to be the same as the interpretation to be given to Regulation 19, then the Regulation 23 would be otiose and redundant. 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. 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.

27. It appears that the order of the Licensing Authority holding the appellant guilty of violation and imposing a penalty has been challenged by the appellant before the Tribunal. So long as that order remains final, the finding that there was violation, also remains. Therefore, the appellant can seek a review of an order of prohibition only if the finding recorded by the Cochin Commissionerate that there was a violation, is

ultimately set aside. Therefore, the appeal fails and the same is dismissed. No costs. Consequently, C.M.P.No.832 of 2016 is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

gr/kpl

To

The Commissioner of Customs,
Chennai-VIII Commissionerate,
Custom House, No.60, Rajaji Salai,
Chennai - 600 001.

+ 1 cc to Mr.T. Chandrasekaran, Advocate Sr.10876
+ 1 cc to Mr.Hariradhakrishnan, Advocate SR.11149

W.A.No.13 of 2016.

LRS(CO)
EU 12.04.16