Reserved on : 11.04.2016
Delivered on : 18.04.2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18.04.2016

CORAM:

THE HON'BLE Mr. JUSTICE M.DURAISWAMY

W.P.No.639 of 2016 and

W.M.P.Nos.457 & 458 of 2016

M/s.Trinity Forwarders (Madras),
No.25, First Floor, R.R.Complex, No.1,
Murthy Lane, Rattan Bazaar,
Chennai - 600 003
rep by its Authorised
Signatory R.Vasudevan ... Petitioner

Vs.

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

Petition filed under Article 226 of The Constitution of India praying to issue a writ of certiorarified mandamus to call for the records of the respondent in F.No.R-609/CHA leading to passing of the order-in-original No.35928/2015 dated 24.03.2015, quash the same and further direct the said respondent to renew and activate the petitioner's Custom House Agents License in No.R-609/CHA.

For Petitioner : Mr.B.Satish Sundar

For Respondent : Mrs.Mallika Srinivasan

O R D E R

The petitioner has filed the above Writ Petition to issue a writ of certiorarified mandamus to call for the records of the respondent leading to passing of the order dated 24.03.2015 and to quash the same and to further direct the respondent to renew and activate the petitioner's Custom House Agents License.

2.It is the case of the petitioner that it was issued with a Custom House Agents License by the respondent. The license has been renewed from time to time and had validity upto 10.02.2015. In the course of the petitioner's operation, it facilitates filing of bills of entry for its clients, for causing imports and shipping bills for its clients, for causing exports of tangible goods. On the strength of the license issued by the respondent, the petitioner was allowed to transact customs related work of its clients in the Port and Airport areas of the Commissionerate of Customs. In the course of the petitioner's business, it undertook Customs Clearance Work on behalf of various firms and individuals, who are importers, who are in the business of import of various goods. The petitioner concern handled clearances of vehicles imported under Transfer of Residence by individuals returning to India for permanent settlement as well as import of cars under EPCG (Export Promotion Capital Goods) Scheme. Before undertaking the customs related work of the said Firms/individuals, necessary authorizations from the respective Firms, through its Authorized Signatories and individuals, were obtained.

3.Besides, documents in the form of Certificates of Registration with Commercial Taxes Department, IEC Certificates issued by the Director General of Foreign Trade, PAN Cards issued by the Income Tax Department were also obtained in respect of each of the Firm, wherever applicable. The necessary import documents like Commercial Invoices, Packing Lists, Bill of Lading and other documents in respect of each of the Firms were furnished by one K.T.Kuppiah. After obtaining the said documents and on verification of the same, the petitioner filed Bills of Entry for the Firms/individuals with the respondent for causing importation. The Customs Department, after due verification of the goods in question, permitted the same to be cleared for home consumption on payment of appropriate duties. The Directorate of Revenue Intelligence, Mumbai Zonal Unit, undertook investigation into the import of vehicles purportedly imported by operators one Jangi and Haren Choksey and noticed that the petitioner had handled some of the imports made through Chennai Port and found that the petitioner had violated the obligations cast upon them under Regulation 13(b), 13(d) and 13 (e) of the CHALR 2004 (now Regulation 11(b), 11(d) and 11(e) of Custom Broker Licensing Regulations, 2013).

4.On 25.06.2010, the petitioner was issued with a show cause notice and called upon to show cause as to why the license issued to them should not be cancelled or the security deposited by them forfeited under Regulation 20(1)(b) of the CHALR, 2004 for non-compliance of the obligations. The petitioner sent their reply and also participated in the enquiry proceedings. The Enquiry Officer filed his report dated 31.03.2013 before the respondent. The respondent, after considering the Enquiry

Report, disagreed with the views of the Enquiry Officer and found that it is a fit case for revocation of license. Further, the respondent observed that the validity of the license had expired on 10.02.2015 and imposed penalty of Rs.50,000/- on the petitioner under Regulation 18 of the Custom Broker Licensing Regulations, 2013. On 28.11.2015, the petitioner applied for renewal of the license, which had subsequently expired on 10.02.2015. However, the license was not renewed by the Authority. As against the order of the respondent dated 24.03.2015, the petitioner has got an alternative remedy of appeal under Regulation 22 of the Custom House Agents Licensing Regulation, 2004. The learned counsel appearing for the petitioner submitted that since the respondent had reversed the findings of the Enquiry Officer without giving an opportunity to the petitioner, the Writ Petition filed by the petitioner is maintainable in respect of Regulation 22.

5.According to the respondent, on receipt of the Enquiry Report dated 31.03.2013 from the Enquiry Officer, the same was forwarded to the petitioner on 18.04.2013 and the petitioner had submitted their representation dated 08.05.2013. Further, in compliance of the provisions of Regulation 20 (7), the respondent granted a personal hearing to the Customs Broker on 13.05.2014. However, the petitioner, by their letter dated 13.05.2014, sought for adjournment of the personal hearing. Therefore, the respondent granted another opportunity of personal hearing on 27.05.2014. However, the petitioner did not attend the hearing on 17.05.2014. Again, the respondent gave an opportunity of personal hearing on 27.06.2014. Even on that day, the petitioner did not attend the personal hearing nor sent any communication to the respondent. From the submissions made by the respondent, it is clear that the reason for passing the impugned order after 90 days cannot be found fault with the respondent. Before the Enquiry Officer also, the petitioner participated in the enquiry proceedings and made their submissions. Inspite of the respondent granting three opportunities of personal hearing, the petitioner neither appeared for the personal hearing nor submitted any reply to the respondent, therefore, the contentions raised by the petitioner that the Writ Petition is maintainable inspite of having an alternative remedy of appeal for the reason that the order passed by the respondent is in clear violation of principles of natural justice, cannot be accepted. Under Regulation 22 of the Custom House Agents Licensing Regulation, 2004, the Commissioner is empowered to disagree with the findings recorded in the Enquiry Report and pass such orders as he deems fit and if the Custom House Agent is aggrieved by the order of the Commissioner, they are entitled to challenge the said order by filing an appeal.

6.The learned counsel appearing for the petitioner relied upon an unreported order of this Court passed in W.P.Nos.3374 of 2015 etc dated 27.10.2015, wherein this Court held that when a time limit is prescribed in Regulations, which empowers action under Regulation 18 by following the procedure in Regulation 20 (1), the use of the term “shall” cannot be termed as “directory” and under such circumstances, the Rule can only be termed as “mandatory”.

7.In view of the reasons stated above, I am of the view that the petitioner has got an alternative remedy by way of an appeal and without exhausting the same, when there is no violation of principles of natural justice, the Writ Petition cannot be entertained. In these circumstances, the judgment relied upon by the learned counsel for the petitioner is not applicable to the facts and circumstances of the present case.

8.For the reasons stated above, the Writ Petition is rejected since an alternative remedy by way of an appeal is available to the petitioner. It is open to the petitioner to challenge the impugned order before the Appellate Authority by way of an appeal in accordance with law. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

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

+1cc to M/S.B.Satish Sundar, Advocate, S.R.No.24487
+1cc to M/S.Mallika Srinivasan, Advocate, S.R.No.24155

W.P.No.639 of 2016 and
W.M.P.Nos.457 & 458 of 2016

ala(CO)
srg(03/05/2016)