



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.10.2016

CORAM:

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THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.A.(MD) No.260 of 2013
and M.P.(MD).No.1 of 2013

The Commissioner of Customs,
Custom House,
New Harbour Estate,
Tuticorin-628 004.

... Appellant/Respondent

Vs

M/s.MKS Shipping Agencies Pvt.Ltd,
No.26C/1B, Kamaraj Nagar,
Tuticorin-628 008,
rep.by its Managing Director,
K.S.Murugan

... Respondent /Petitioner

Writ Appeal is filed under Clause 15 of Letters Patent against the order dated 04.01.2013 made in W.P.(MD).No.16351 of 2012.

Prayer in WP(MD). 16351/ 2012 :

Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari to call for the records of the respondent regarding the issue of Show cause Notice C.No. VIII/13/23/1993 - CHAL dated 06.12.2012 and quash the same.

For Appellant :Mr.R.Nandakumar

For Respondent :Mr.P.Saravanan

JUDGMENT

[Judgment of the Court was delivered by

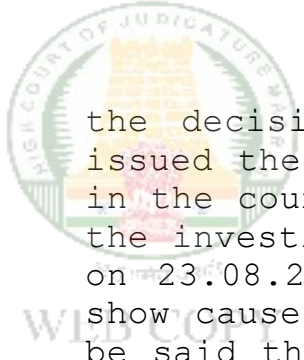
M. SATHYANARAYANAN, J.]

The respondent / Revenue in W.P.(MD).No.16351 of 2012 is the appellant herein and aggrieved by the final order, dated 04.01.2013, in and by which, challenge made to the show cause notice, dated 06.12.2012, issued by the appellant herein, has been quashed by the learned Judge and hence, came forward to file this Writ Appeal.



2. A perusal of the materials placed before this Court would disclose among other things that the respondent /writ petitioner carries the business of Custom House Agents (in short 'CHA') and to carry out this agency work, he obtained license in the year 2004 under Section 146 of the Customs Act 1962 and CHALR 2004 Regulations. The nature of the activities carried on by the said Concern is relating to entry or departure of a conveyance or the import or export of goods in the Customs House Station and their role is limited to the works of preparing documents in the form of prescribed documents under the Customs Act and present the same before the Officer concerned of Customs for assessment to determine the duty amount to be paid and present the goods before the proper officer of customs for physical examination before it is actually cleared from the Customs House Station. It is further stated by the respondent /writ petitioner that Regulation 20(1) of the CHALR 2004 provides for revocation of CHA license granted to a CHA Company after following the procedure prescribed under Regulation 22. Regulation 20(2)r/w20(3) provides for immediate suspension of license without following the procedures prescribed under Regulation 22. The proceeding under Regulation 20(1) and Regulation 20(2) are independent of one another by the virtue of the non-obstante clause in Regulation 20(2). It is further stated by the respondent /writ petitioner that a show cause notice was issued by the appellant/respondent with regard to the certain allegations committed by the respondent/writ petitioner and based on which, the appellant/respondent in the Writ Petition had passed on an order, dated 12.09.2012, suspending their license under Regulation 20(2) and against which, an appeal has been preferred by the respondent / Writ Petitioner before CESTAT and pending disposal of the same, the impugned show cause notice has been issued to them for the purpose of revoking the CHA license and challenging the said show cause notice, the writ petitioner contended that as per Regulation 20(1), it has to be issued within 90 days from the date of offence report and in the case on hand, the offence report was received by the appellant on 29.08.2012 and the impugned show cause notice should have been issued on or before 27.11.2012, whereas, it was issued on 06.12.2012 and as such, the said notice, on the face of it, is unsustainable and prays for quashment of the notice issued by the appellant/respondent.

2.1. The appellant/respondent had filed a counter affidavit stating among other things that challenging the suspension order, the respondent/writ petitioner had filed an appeal before the CESTAT and stay was granted upto 12.11.2012. Thereafter, W.A.(MD).No.946 of 2012 came to be filed by the respondent/ Writ Petitioner and interim order was extended upto 31.12.2012. On account of the fact that the said issue was pending litigation before this Court in different stages from the month of October 2012 to November 2012, the department waited for



the decision of the High Court till 29.11.2012 and thereafter, issued the show cause notice on 06.12.2012. It is further stated in the counter that Director of Revenue Intelligence had finalised the investigation on 31.07.2012 and prepared the show cause notice on 23.08.2012 and on account of the pendency of the litigation, show cause notice was issued on 06.12.2012 and as such, it cannot be said that the notice has been issued beyond 90 days and prayed for the dismissal of the Writ Petition.

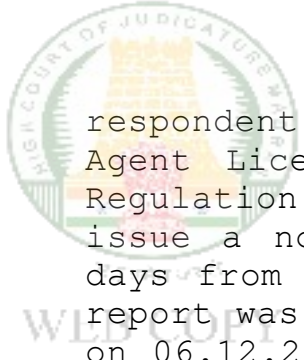
2.2. The learned Judge, after taking note of the rival submissions and on a careful scrutiny and analyse of the materials found that the litigation pending before this Court pertains only to the suspension of the Customs House Agency granted in favour of the the respondent /writ petitioner and it has nothing to do with the initiation of proceedings under 22 of the Custom House Agents Licensing Regulations 2004 and as such, the period in which the time has been elapsed on account of the pendency of the litigation, cannot be cited as a ground for the belated issuance of the show cause notice and therefore, found that the show cause notice was issued beyond the period of 90 days from the date of offence report as stipulated under Section 22(1) of CHALR and therefore, quashed the show cause notice vide his order, dated 04.01.2013 and challenging the legality of the same, the Revenue has filed this Writ Appeal.

3. Mr.Nandakumar, learned Standing Counsel appearing on behalf of the appellant/respondent would vehemently contend that it is only a show cause notice and the respondent / writ petitioner can very well respond to the same and in the event of any adverse order being passed, he is having an alternative remedy before CESTAT and therefore, the Writ Petition ought to have been dismissed *in limine*. It is the further contention of the appellant / respondent though Regulation 22(1) says that 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 that the grounds on which it is proposed to suspend or revoke the license, it is only a directory in nature and not mandatory and as such, the findings of the learned Judge that the impugned show cause notice was issued beyond the period of 90 days from the date of receipt of offence report is, on the face of it, unsustainable and prays for quashment of the order impugned in this Writ Appeal.

3.1. In support of his contention, he has placed reliance upon the judgments reported in **AIR 1952 SC 181, Dattatraya Vs. State of Bombay (Constitution Bench), (1998) 7 SCC 123, N.Balakrishnan Vs. M.Krishanmurthy and 2006 (203) E.L.T.549 (Mad.)**.

<https://hcservices.ecourts.gov.in/hcservices/>

4. *Per contra*, learned Counsel appearing for the



respondent / Writ Petitioner would contend that the Customs House Agent Licensing Regulations 2004 is having statutory force and Regulation 22(1) mandates that the Commissioner of Customs shall issue a notice in writing to the Customs House Agent within 90 days from the date of offence report and admittedly, the offence report was received on 29.08.2012 and show cause notice was issued on 06.12.2012, which is beyond 90 days and the interim suspension passed under Regulation 20(2) of the Custom House Agents Licensing Regulations 2004 has nothing to do with the action to be taken under Regulation 22(1) of the Act as both are independent of each other and said fact has been taken into account by the learned Judge and rightly, quashed the impugned notice issued by the appellant/ respondent.

5. This Court has paid its best attention to the rival submissions of the either side and also perused the materials placed before us.

6. In the case of ***the Commissioner of Customs Vs The Customs Excise and Service Tax***, reported in ***2014-3-L.W.632***, when the similar issue came up for consideration as to whether the order of suspension passed under Regulation 22 of Customs House Agents Licensing Regulations 2004, the time limit is to be complied with or not?, the Division Bench of this Court in which I am one of the parties (M.Sathyannarayanan,J) has considered the scope of Regulation 20(1) and 22(1). In paragraph No.25, we have observed that as per the notification and instruction dated 20.01.2014, the time limit has been prescribed in respect of the procedure contemplated under Regulation 22 and as per sub-regulation (1) of Regulation 22, the Commissioner of Customs shall issue in writing to the Customs House Agent within ninety days from the date of receipt of offence report, stating that the grounds on which it is proposed to suspend or revoke the license and require the said CHA to submit within 30 days..... In paragraph No.26 of the order, this Court stated the Government of India, Ministry of Finance(Department of Revenue), Central Board of Excise & Customs, New Delhi has issued issued Circular No.9/2010-Cus., dated 08.04.2010 in F.No.502/2008-Cus VI, wherein clarification on procedures in issuance of licence to CHAs have been issued and it is relevant to extract the following paragraphs:

"V)Time limit for completion of suspension proceedings against CHA licensee under Regulation 22:

6.1.The present procedure prescribed for completion of regular suspension proceedings takes a long time since it involves inquiry proceedings, and there is no time limit prescribed for completion of such proceedings. Hence, it has been decided by the Board to prescribe an overall time limit of nine months from the date of receipt of offence report, by prescribing time

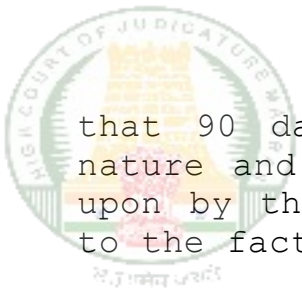


limits at various stage of issue of show cause notice, submission of inquiry report by the Deputy Commissioner of Customs or Assistant Commissioner of Customs recording his findings on the issue of suspension of CHA license, and for passing of an order by the Commissioner of Customs. Suitable changes have been made in the present time limit of forty five days for reply by CHA to the notice of suspension, sixty days time for representation against the report of AC/DC on the grounds not accepted by CHA, by reducing the time to thirty days in both the cases under the Regulations.

6.2. In cases where immediate suspension action against a CHA is required to be taken by a Commissioner of Customs under regulation 20(2), there is no need for following the procedure prescribed under Regulation 22 since such an action is taken immediately and only in justified cases depending upon the seriousness or gravity of offence. However, it has been decided by the Board that a 'post-decisional hearing' should be given in all such cases so that errors apparent, if any, can be corrected and an opportunity for personal hearing is given to the aggrieved party. Further, Board has also prescribed certain time limits in cases warranting immediate suspension under Regulation 20(2). Accordingly, the investigating authority shall furnish its report to the Commissioner of Customs who had issued the CHA license (Licensing Authority), within thirty days of the detection of an offence. The Licensing authority shall take necessary immediate suspension action with fifteen days of the receipt of the report of the investigating authority. A post-decisional hearing shall be granted to the party within fifteen days from the date of his suspension. The Commissioner of Customs concerned shall issue an Adjudication Order, where it is possible to do so, within fifteen days from the date of personal hearing so granted by him?"

7. This Court in the above cited decision has also taken note of the decision reported in **[(1996) 10 SCC 387]**, **Ranadey Mictronutrients Vs. Collector of Central Excise**, wherein, it has been held that the Board Circular is binding on the Revenue and there cannot be any challenge on the ground of inconsistency with the statutory provision and also taken note of yet another decision reported in **[(2014) 3 SCC 488, Commissioner of Customs, Calcutta and Others Vs Indian Oil Corporation Ltd., and another]**, which also laid down the similar proposition.

8. In the light of the fact that the Customs House Agent Licensing Regulation having statutory force and it is also reiterated in the above cited circular, this Court is of the view



that 90 days prescribed under Regulation 22(1) is mandatory in nature and cannot be treated as directory. The judgments relied upon by the learned Counsel for the appellant are not applicable to the facts and circumstances of the case.

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9. Insofar as the submission of the learned Counsel for the appellant that since the impugned notice is a show cause notice, it cannot be challenged by filing a Writ Petition and remedy open to the respondent/ Writ Petitioner is to submit his response and in the event of any adverse order, he can file an appeal before CESTAT Act, the said submission lacks merits and substance for the reason that admittedly, the impugned show cause notice has been issued beyond the period of ninety days from the receipt of offence report and since the relevant statutory regulation as well as Circular issued by them had been violated with impunity, the respondent / Writ Petitioner need not be driven to avail the alternative remedy. In this context, it is useful to refer to the decision of the judgment reported in **(2004) 7 SCC 166, S.J.S.Busniess Enterprises (P) Ltd Vs. State of Bihar and Others**, wherein, it has been held as follows:-

"Assuming that the explanation given by the appellant that the suit had been filed by one of the Directors of the Company without the knowledge of the Director who almost simultaneously approached the High Court under Article 226 is unbelievable, the question still remains whether the filing of the suit can be said to be a fact material to the disposal of the writ petition on merits. We think not. The existence of an adequate or suitable alternative remedy available to a litigant is merely a factor which a Court entertaining an application under Article 226 will consider for exercising the discretion to issue a writ under Article 226. But the existence of such remedy does not impinge upon the jurisdiction of the High Court to deal with the matter itself if it is in a position to do so on the basis of the affidavits filed. If however a party has already availed of the alternative remedy while invoking the jurisdiction under Article 226 it would not be appropriate for the Court to entertain the writ petition. The Rule is based on public policy but the motivating factor is the existence of a parallel jurisdiction in another Court. But this Court has also held in Chandra Bhan Gosain Bhan V. State of Orissa that even when an alternative remedy has been availed of by a party but not pursued that the party could prosecute proceedings under Article 226 for the same relief. This Court has also held that that when a party has already moved the High Court under Article 226 and failed to obtain relief and then moved an application under Article 32 before this Court for the



same relief, normally the Court will not entertain the application under Article 32. But where in the parallel jurisdiction, the order is not a speaking one or the matter has been disposed of on some other ground, this Court has, in a suitable case, entertained the application under Article 32. Instead of dismissing the writ petition on the ground that the alternative remedy had been availed of, the Court may call upon the party to elect whether it will proceed with the alternative remedy or with the application under Article 226. Therefore the fact that a suit had already been filed by the appellant was not such a fact the suppression of which could have affected the final disposal of the writ petition on merits."

10. The learned Judge, on facts of the case has categorically found that despite an offence report dated 29.08.2012, the appellant fails to issue the notice within the time prescribed under the Customs House Agents Licensing Regulations 2004. It is also pertinent to point out at this juncture that the interim order of suspension passed against the respondent / Writ Petitioner by invoking Regulation 20(2) of the Customs House Agents Licensing Regulations 2004 has nothing to do with the Regulation 22(1) of the Customs House Agents Licensing Regulations 2004 as both are independent to each other and therefore, the pendency of the legal proceedings pertain to the interim suspension cannot operate as any impediment for the appellant to issue the notice within the time prescribed under the Customs House Agents Licensing Regulations 2004 and as such, the belated issuance of the show cause notice, after the receipt of the offence report dated 29.08.2012, on the face of, is unsustainable. The learned Judge has rightly taken note of the said aspect and reached the conclusion to allow the Writ Petition.

11. This Court, on an independent application of mind, is of the view that there is no irregularity or error apparent on the face of the record, which warrants interference and finds no merits, in this Writ Appeal and therefore, it is dismissed confirming the order of the learned Judge dated 04.01.2013 made in W.P.(MD).No.16351 of 2012. However, in the facts and circumstances of the case, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar



ssm

To:

The Commissioner of Customs,
Custom House,
New Harbour Estate,
Tuticorin-628 004.

+1CC to Mr.P.Saravanan, Advocate Sr.No.63163
+1CC to Mr.R.Nandakumar, Advocate Sr.No.63258

GJM/GSV/PM/9.11.16-8p-4C

W.A (MD) .No.260 of 2013
24.10.2016