IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.10.2017

Coram:

The Honourable Mr. Justice T.S. Sivagnanam

W.P.Nos. 20994 and 26820 of 2017
and
W.M.P.Nos.21879 and 28537 of 2017

M/s.Sea Queen Shipping Services Pvt. Ltd,
No.1, Kapali, Arunachalapuram Second Street,
Adyar, Chennai 600 020
Represented by its Managing Director
Shri S.Padmanabhan ..Petitioner in both W.Ps

Versus

The Commissioner of Customs, Chennai
VIII Commissionerate,
Custom House, No.60,Rajaji Salai,
Chennai 600 001 ..Respondent in both W.Ps

Prayer in W.P.No.20994 of 2017 :

Writ Petition filed under 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for records of the respondent in F.No.R-226/CHA, dated ...07.2017 and quash the same, as the same has been issued, contrary to the provisions of Regulation 19(1) of the Custom Broker Licensing Regulations, 2013.

Prayer in W.P.No.26820 of 2017:

Writ Petition filed under 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for records of the respondent in F.No.CHN/R-226/2013-CHA(CBS) leading to issuance of Show Cause Notice, dated 06.09.2017 issued under Regulation 20(1) of the Customs Brokers Licensing Regulation, 2013 and to quash the same.

For Petitioner in both W.Ps. :Mr.S.Krishnanandh

For Respondent in W.P.No.20994/2017:Mrs.Hema Murali Krishnan, Senior Panel Counsel

For Respondent in W.P.No.26820 of 2017 :Mrs.R.Hemalatha Senior Panel Counsel

COMMON ORDER

Heard Mr.S.Krishnanandh, the learned counsel appearing for the petitioner, Mrs.Hema Murali Krishnan, the learned Senior Panel Counsel for the respondent in W.P.No.20994/2017 and Mrs.R.Hemalatha, the learned Senior Panel Counsel, accepting notice on behalf of the respondent in W.P. No.26820 of 2017. Since the counter affidavit has already been filed in one of the Writ Petitions, i.e. in W.P.No.20994 of 2017, both the Writ Petitions were taken together, and disposed of by this common order.

2. In W.P.No.20994 of 2017, the petitioner has challenged the order of suspension issued under Regulation 19 of the Customs Broker Licence Regulation, 2013 (CBLR). Insofar as W.P.No.26820 of 2017 is concerned, the petitioner has challenged the show cause notice, dated 06.09.2017, issued under Regulation 20 (1) of the CBLR.

3. At the first instance, this Court will take up the Writ Petition, challenging the order of suspension, i.e. W.P.No.20994 of 2017.

4. The petitioner was granted customs broker licence under Regulation 7 (1) of CBLR, and it is valid till 02.11.2025. The petitioner acted as customs broker agent for a Firm, functioning under the name and style ''M/s.Payal Enterprises'' and it had filed a Bill of Entry, dated 04.04.2016, through the petitioner, for import of certain items from China, which was described as "Water Filter, Toy Baby Chair, Toy Ball and Toy Rattle". The customs Group conducted first check on 06.04.2016. At that juncture, the petitioner's addressed the Assistant Commissioner of Customs, Group-7H, Customs House, Chennai, and made a request to amend the Bill of Entry, by adding invoice No.YF2-2016, dated 15.03.2016, and changing the description of the goods, quantity and value, as per the second invoice. The list of goods, as per the second invoice, included i) Toy Baby Chair Assorted, ii) Toy Ball and iii) Chloro Di Fluoro Methane.

4.1 On scrutiny, the Department opined that the imported consignment did not tally with the items declared in the IGM, and therefore, SIIB vide letter, dated 01.04.2016 detained the container for detailed examination. After recording statement from the petitioner and the importer, the Assistant Commissioner of Customs House, Commissionerate III, Chennai, issued a show cause notice dated 06.06.2017, under Section 28 and 124 of the

Customs Act, 1962 (hereinafter, referred to as the Act) in which, the petitioner was one of the noticees. The show cause notice proposed to confiscate 2420 boxes of refrigerant, 22 gas cylinders under Section 111(d) and 111 (m) of the Act and proposed to impose penalty against the importer as well as the petitioner.

4.2 The petitioner has submitted their reply, dated 20.06.2017, and the show cause notice is pending adjudication before the Customs Authority. While so, the impugned order of suspension has been passed under Regulation 19 (1) of CBLR, suspending the petitioner's customs broker licence with immediate effect. Further, the Commissioner of Customs has furnished the documents already filed prior to the order of suspension.

5. The validity of order of suspension is questioned/impugned in Writ Petition No.20994 of 2017.

5.1 Before I proceed to consider the validity of the impugned order, it is necessary to note, as to how the Regulation 19 (1) of the CBLR is worded, and it reads as follows:-

> " (1) Notwithstanding anything contained in regulation 18, the Commissionerof 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 dateof such suspension, give an opportunity of hearingto the Customs Broker, whose licence is suspended and may pass such order as he deemds fit either revoking the suspension or continuing it, as the case may be, within fifteen days from the date of hearing granting to the Customs Broker.
>
> Provided that, in case, the Commissioner ofCustoms passes an order for continuing the suspension, the further procedure thereafter shall be as provided in Regulation 20."

5.2 As stated above, the respondent has invoked Regulation 19(1). This Regulation commences with a non-obstante clause and states that, notwithstanding anyting contained in Regulation 18, the Commissioner 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. Thus, to invoke the power under Regulation 19(1), the Commissioner of Customs should be satisfied that, immediate action is necessary to suspend the customs broker licence, and such powerr is exercisable, where, an enquiry against the Agent (petitioner in this case) is pending or contemplated.

6. In my considered opinion, enquiry should be conducted under the provisions of CBLR, and the respondent cannot fallback upon the show cause notice, which has been issued to the petitioner, under the Customs Act. This is more so, because, the licence has been granted, in terms of CBLR, and enquiry ought to have been commenced against the customs broker, for violation of the licence conditions, and for such other matters, as provided under the Regulations, and in particular, Regulation 18.

7. On a reading of the impugned order of suspension, it is seen that there is no enquiry, either pending, or contemplated against the petitioner, under the CBLR. Therefore, the power under Regulation 19 (1) of the CBLR could not have been invoked. Furthermore, there was no necessity to suspend the petitioner's customs broker licence, as the consignment was detained on 01.04.2016.

8. As noticed above, the importer had requested the petitioner to amend the Bill of Entry, by adding invoice No.YF2-2016, dated 15.03.2016, and changing the description of the goods, quantity and value, as per the second invoice, and such a request was made on 04.04.2016. Therefore, I find that, there is no immediate necessity for suspending the licence issued to the petitioner. At this juncture, it will be beneficial to refer to the judgment of Hon'ble Division Bench of this Court, in Commissioner of Customs (Exports) Chennai Vs. Ganesh Shipping Agency reported in [(2009) 245 E.L.T. 120 (Madras)]. In the said case, the Division Bench considered the correctness of the final order passed by the Customs, Excise Service Tax Appellate Tribunal (CESTAT), which had allowed the Appeal filed by the Customs Broker Agent, challenging the suspension of his licence under Regulation 20(2) of the Customs House Agents Licensing Regulation 2004, which is a pari materia within Regulation 19 of the CBLR. The Division Bench dismissed the Appeal filed by the Revenue and held as follows:-

> " From the foregoing provision, it is true that the Commissioner is vested with power to suspend the licence of the Customs House Agent, if he is of the view that, such an order has to be necessarily passed, having regard to the irregularities committed by the

Customs House Agent against whom, an enquiry is pending or contemplated. In the absence of contemplation of enquiry or pending enquiry, the suspension order cannot be passed by invoking the power vested with the Commissioner under Section 20 (2) of the Customs House Agents Licensing Regulations, 2004. In this case, liberty has been given to the authority to proceed further, if so advised, in accordance with law. Therefore, we are of the view that the order impugned requires no interference as there is no question of law, much less, a substatial question of law is involved in the Appeal for the purpose of entertainment. Hence, the Appeal is dismissed. No costs. "

9. The above judgment of the Hon'ble Division Bench applies with full force to the case on hand, as, in the absence of contemplation of enquiry, or pending enquiry, suspension order cannot be passed by invoking the power vested with the Commissioner under Regulation 19(1) of CBLR.

10. Thus, for the above reasons, the order of suspension impugned in W.P.No.20994 of 2017 shall remain stayed till the adjudication of the show cause notice, dated 06.09.2017 issued under the Regulation 20 (1) of the CBLR. By virtue of this order, the petitioner would be entitled to carry on their activities as a licensed customs broker. Though the petitioner had challenged the show cause notice, by filing W.P.No.26820 of 2017, the learned counsel appearing for the petitioner seeks permission of this Court to withdraw the Writ Petition and participate in the adjudication proceedings. To the said effect, an endorsement has been made in the Writ Petition No.26820 of 2017. In view of the said submission coupled with the endorsement, the permission as sought for by the the learned counsel for the petitioner is granted.

11. Accorrdingly, the Writ Petition in W.P.No.20994 of 2017 is disposed of and W.P.No.26820 of 2017 is dismissed as withdrawn. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

s/d-
Deputy Registrar

True Copy

Sub-Assistant Registrar

To

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

+1 CC to Ms.K. Sathish Kumar, Advocate sr 81959.
+1 CC to Ms.Hema Muralikrishnan, Advocate sr 81960.
+1 CC to Ms.R. Hemalatha, Advocate sr 73660.

W.P.Nos. 20994 of 2017
and 26820 of 2017

SP(22/11/2017)