

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.08.2017

CORAM:

THE HON'BLE Mr.JUSTICE T.S.SIVAGNANAM

Writ Petition No.22706 of 2017
and
W.M.P.No.23803 of 2017

M/s. Bharath Marine Company,
Rep. by its Partner, M.B.Govindaraj,
No.2, Jaffersyrang Lane,
Chennai 600 001 ... Petitioner

...Vs...

1. The Commissioner of Customs,
Chennai VIII Commissionerate,
Custom House, No.60 Rajaji Salai,
Chennai 600 001
2. The Assistant Commissioner of Customs
and Enquiry Officer,
Commissionerate - II, Custom House,
No.60 Rajaji Salai, Chennai 600 001 ... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records contained in and connection with show cause notice in F.No.R-354/CHA, dated 19.07.2017, quash the same and forbear the respondents from proceeding with the enquiry under the CBLR 2013.

For Petitioner : Mr. S.Krishnanand

For Respondents : Mr. V.Sundareswaran,
Senior Panel Counsel

WEB COPY
O R D E R

Heard Mr.S.Krishnanand, learned counsel appearing for the petitioner and Mr.V.Sundareswaran, learned Senior Panel Counsel, who accepts notice for the respondent. With consent of the learned counsel appearing for both sides, the writ petition is taken up for final disposal at the admission stage itself.

2. The petitioner has challenged the show cause notice issued under Sub Regulation 1 of Regulation 20 of the Customs Broker Licensing Regulations, 2013. Challenge to the show

cause notice is only on the ground that it is wholly without jurisdiction, as for the very same allegation and for the very same period, earlier notice was issued to the petitioner, on 31.10.2014. This was challenged by the petitioner, by filing W.P.No.31596 of 2014.

3. One of the contentions raised by the petitioner, in the said writ petition, was that, prior to the show cause notice dated 31.10.2014, a show cause notice dated 02.07.2014 was issued, which was challenged by the petitioner in W.P.No.21941 of 2014. The said writ petition was allowed, by order dated 15.09.2014. The Court came to the conclusion that in the light of categorical assertions and findings in the show cause notice dated 02.07.2014, no useful purpose would be served in asking the petitioner to submit a reply to the show cause notice. It was pointed out that, at the stage of issuance of show cause notice, the first respondent should only have an open mind and if mind is closed with pre-determined conclusions, the requirement of giving an opportunity to show cause becomes nugatory.

4. The petitioner's contention was that the second show cause notice, dated 31.10.2014, issued after the disposal of W.P.No.21941 of 2014, is the verbatim repetition of the first show cause notice dated 02.07.2014. When this was put to challenge in W.P.No.31596 of 2014, the Court, on being prima facie satisfied with the contentions raised, granted an order of interim stay on 03.12.2014. The said writ petition is pending and the order of stay is still in force and the respondents have filed their counter affidavit. Therefore, based on the very same set of allegations one more show cause notice cannot be issued by the respondents, as done in the impugned show cause notice.

5. The factual position that the earlier writ petition is pending before this Court and the show cause notice, dated 31.10.2014, has been stayed by this Court, is not disputed by the respondents. Therefore, the impugned show cause notice cannot stand in the eyes of law. Accordingly, the writ petition is allowed and the impugned order is quashed only on the above technical ground and not on the merits. No costs. Consequently, the connected WMP is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

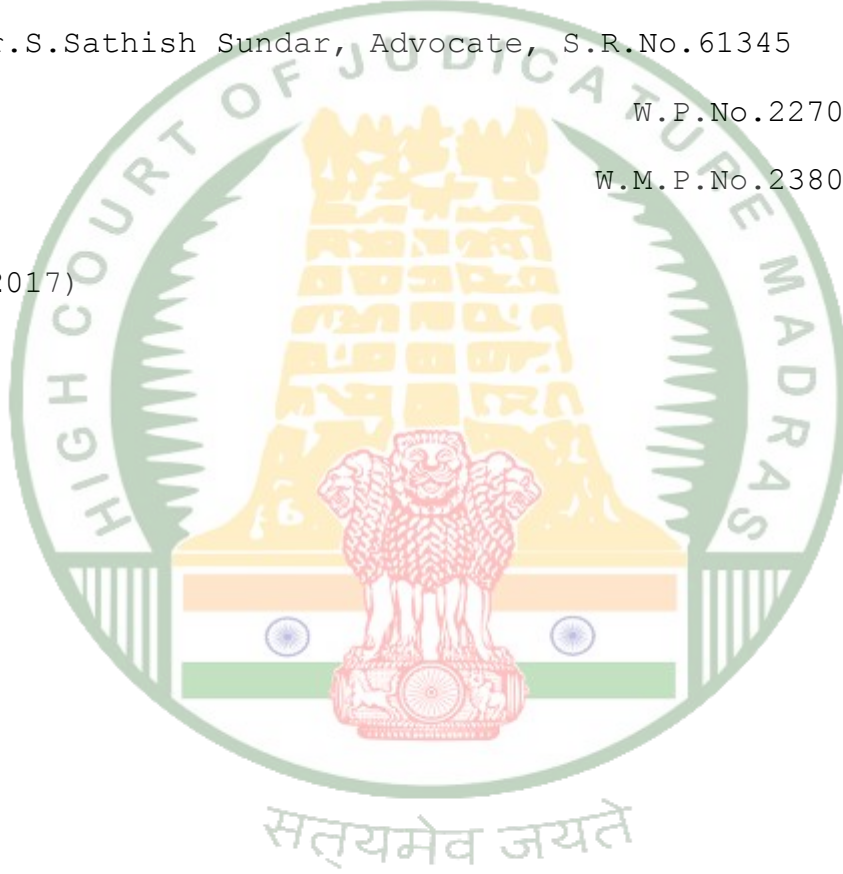
To

1. The Commissioner of Customs,
Chennai VIII Commissionerate,
Custom House, No.60 Rajaji Salai,
Chennai 600 001
2. The Assistant Commissioner of Customs
and Enquiry Officer,
Commissionerate - II, Custom House,
No.60 Rajaji Salai, Chennai 600 001

+1cc to Mr.S.Sathish Sundar, Advocate, S.R.No.61345

W.P.No.22706 of 2017
&
W.M.P.No.23803 of 2017

CS IV
CA(08/09/2017)



WEB COPY