IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2017

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.16880 of 2017 &
W.M.P.No.18346 of 2017

CMA CGM Agencies (India) Pvt. Ltd.,
Rep. by its Branch Manager,
Mr.N.shyam Sundar,
Anna Salai, Nandanam, Chennai – 600 035. ... Petitioner

Vs.

1. The Commissioner of Customs (Import),
   Customs House, No.60, Rajaji Salai,
   Chennai – 600 001.

2. The Deputy Commissioner of
   Customs (Import), Customs House,
   No.60, Rajaji Salai, Chennai – 600 001. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a WRIT OF MANDAMUS directing respondents herein and/or the Officers of the Customs Department to forthwith renew the license issued to them under the Custom House Agents Licensing Regulations 2004 and now under the Customs Brokers Licensing Regulations, 2013 the last of which license was granted by a letter dated 05.07.2016 to be valid up to 04.07.2017, on the basis of the petitioner's application for renewal as contained in their letters dated 02.06.2017, 14.06.2017 and 27.06.2017 for a period of 10 years from 04.07.2017 as contemplated under the said Regulations so as to enable the petitioner to continue to carry on its business activities without any interruption.

For Petitioner : Mr.S.Raghunathan

For Respondents : Mr.S.R.Sundar,
Senior Panel Counsel

O R D E R

Heard Mr.S.Raghunathan, learned counsel appearing for the petitioner and Mr.S.R.Sundar, learned Senior Panel Counsel for the respondent Department. With the consent on either side, the writ petition itself is taken up for disposal.

2.The petitioner is before this Court praying for issuance of a writ of mandamus to direct the respondents to forthwith renew the license issued to them under the Customs House Agents Licensing Regulations, 2004 and at present under the Customs Brokers Licensing Regulations, 2013, so as to enable the petitioner to carry on its business activities.

3.The learned counsel for the petitioner has filed a memo dated 04.07.2017 enclosing a copy of the order passed by the Assistant Commissioner of Customs (Import) dated 03.07.2017, in and by which, the Streamer Agent License issued to the petitioner has been temporarily renewed upto 04.01.2018. Thus partial relief sought for by the petitioner has been granted by the Department themselves. However, the learned counsel for the petitioner submitted that on every occasion, the petitioner is compelled to approach this Court and it is a great agony and affecting their business to a great extent as they have not been granted renewal of license for a regular term of 10 years which ought to have been granted. Further, it is submitted that the show cause notice which is pending adjudication since 2012 cannot be a ground to deny renewal of license for the full period of 10 years in terms of the Regulations, 2013. The petitioner was issued a show cause notice by the respondent Department dated 15.02.2012, which pertain to short landing of cargo. In the said show cause notice, the authority called upon the petitioner to show cause as to why the imported goods viz. 31.69 metric tonnes of High Melting Scrap should not be held liable to confiscation under Section 111(f) of the Customs Act, 1962; why the containers used to carry the aforesaid goods should not be confiscated under Section 118(a) of the Customs Act, 1962; and why the penalty should not be imposed on them under Section 116 of the Customs Act, 1962 for not having accounted for the heavy Melting Scrap for the quantity or 1657.45 metric tonnes. Apart from the petitioner, there were two other noticees viz. "M/s.OPG Metals Pvt. Ltd., No.7/1 & 4/3, Komal Road, Mathur Village, Vayiladuthurai, Therizhandur Post - 609 808 and M/s.Kanishk Steel Industries Ltd., Plot No.B-27(M), SIPCOT Industrial Complex, Gummidipoondi - 601 201, Tamil Nadu".

4.The petitioner submitted that their objections on 06.03.2012. The show cause notice had not been adjudicated and no orders were passed. In the meantime, since the license earlier granted was expiring, the petitioner approached this Court and filed W.P.No.38359 of 2015, wherein an identical prayer as sought for in this writ petition was prayed for, to direct the respondents to renew the Streamer Agent License for a period of 10 years as contemplated under the Regulations or atleast for a period of 3 years so as to enable the petitioner to carry on its business activities without any interruption.

5.Counter affidavit was filed by the respondent Department and this Court by order dated 29.06.2016 disposed of the writ petition directing the authority to consider the petitioners' application dated 18.11.2015 for renewal of the license for a period of one year with effect from 05.07.2016. The operative portion of the direction is as follows;

> "5.The learned Standing Counsel for the respondents referred to Regulation 9 of the 2013 Regulations and submitted that in terms of sub-regulation (2) of Regulation 9, the renewal will be considered and granted in the absence of instances of any complaints of misconduct.
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> 6.In my view, the pendency of a show cause notice for adjudication that too for a period of three years cannot be a sole ground to grant temporary renewal to the petitioner. That apart, it is not known as to why the Officer, who had adjudicated the show cause and given a personal hearing on 21.06.2012, has not passed any orders on the petitioner's application. As already observed, merely because the petitioner has approached this Court seeking certain relief and the writ petition is pending does not mean that the petitioner is charged with a misconduct. Therefore, the reason assigned by the respondents in the counter affidavit for not granting renewal for a longer period and renewing the license temporarily is not sustainable.
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> 7.Accordingly, the writ petition is allowed and the second respondent is directed to consider the petitioner's application dated 18.11.2015 and renew the petitioner's license for a period of one year with effect from 05.07.2016 and within the said time, the concerned authority viz., the Additional Commissioner of Customs (MCD), Customs House, Chennai shall complete the adjudication of the show cause notice dated 15.02.2012 after affording a fresh opportunity of personal hearing to the petitioner".

6.In the above order, there were twin directions to the Department, namely, one regarding the renewal of license and the other regarding adjudication of show cause notice after affording a fresh opportunity of personal hearing. Both the directions have been complied with and the license granted to the petitioner was renewed for a period of one year, i.e. upto 04.07.2017. Apart from that, personal hearing was also granted to the petitioner by the Officer who is adjudicating the show cause notice dated 15.02.2012. In the present situation, the petitioner has approached this Court by way of this writ petition and after the writ petition was filed, the license has now been renewed for a period of six months, i.e. upto 04.01.2018. In any event, the petitioner's contention is that the license is liable to be renewed for a full term of 10 years in terms of the Regulations. However, this Court, at this juncture, does not propose to render any finding on this aspect as the show cause notice has been adjudicated and orders are to be passed coupled with the fact that the license has since been renewed for a period of six months by order dated 03.7.2017.

7.Accordingly, this writ petition stands disposed of by recording the order dated 03.07.2017 and directing the Additional Commissioner of Customs (Imports) to pass final orders on the show cause notice dated 15.02.2012 within a period of six weeks from the date of receipt of a copy of this order. It is made clear that the issue as to whether the petitioner is entitled for renewal of the license for a full term of 10 years is left open to be adjudicated as and need arises to do the same. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

abr

To

1. The Commissioner of Customs (Import),
   Customs House, No.60, Rajaji Salai,
   Chennai - 600 001.

2. The Deputy Commissioner of
   Customs (Import), Customs House,
   No.60, Rajaji Salai, Chennai - 600 001.

3. The Additional Commissioner (Imports),
   O/o The Commissioner of Customs, Chennai-III,
   Customs House, No.60,
   Rajaji Salai, Chennai - 600 001.

+1cc to M/s.S.Raghunathan, Advocate in sr.no.46514
+1cc to M/s.S.R.Sundar, Advocate in sr.no.46294

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MP(CO)
NR 17/07/2017