

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.14269 of 2004

M/s.Instant Clearing Services India Pvt. Ltd.,
Rep. by its General Manager,
Mr.P.R.Kapaleeswaran,
No.242, Angappa Naicken Street,
Chennai - 600 001.

... Petitioner

Vs.

The Commissioner of Customs (Port),
"Custom House",
No.33, Rajaji Salai,
Chennai - 600 001.

... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the Impugned Order in Original No.2152/2004 in F.No.R-96/CHA dated 30.04.2004 passed by the respondent and quash the same as arbitrary and illegal.

For Petitioner : Mr.Derricksam

For Respondent : Mr.K.S.Ramasamy,
Senior Panel Counsel.

O R D E R

Heard Mr.Derricksam, learned counsel for the petitioner and Mr.K.S.Ramasamy, learned Senior Panel Counsel for the respondent.

2.After some arguments, the learned counsel for the petitioner expressed that his client may be permitted to approach the CESTAT by way of filing an appeal in the light of the change of circumstances that the original set of directors are no longer in the Company and in view of the stand taken that CHA license has been continuously operated upon and there is no allegation except the one which has resulted in the impugned order.

3.Learned counsel further submits that the Commissioner agreed with the findings of the enquiry officer, but disagreed with the recommendation of the Enquiry Officer with regard to penalty that should have been imposed. Though the recommendation of the Enquiry Officer on the penalty would not bind the Commissioner, yet, the two directors who have cooperated with the Department in the investigation as well as during the enquiry, have clearly stated that they are innocent and therefore, the punishment imposed on the CHA is disproportionate to the allegation of the above points canvassed by the petitioner before the Tribunal.

4.Accordingly, this writ petition is disposed of by granting liberty to the petitioner to file an appeal before the CESTAT and the Tribunal is directed to exclude the period during which the writ petition was pending (i.e.) from 17.05.2004 till the date of receipt of certified copy of this order for the purpose of computing limitation.

5.Since, the petitioner had the benefit of interim order of stay since 19.05.2004, the same shall continue till the petitioner presents the appeal before the CESTAT which was to be done by the petitioner within 30 days from the date of receipt of a certified copy of this order, after which it is open to the petitioner to move the tribunal for appropriate relief. No costs.

-s/d-
Assistant Registrar(CS-VI)

True Copy

Sub-Assistant Registrar

abr

To

The Commissioner of Customs (Port),
"Custom House",
No.33, Rajaji Salai,
Chennai - 600 001.

+1 CC to Mr. Hari Radhakrishnan, Advocate sr 50843
+1 CC to Mr.K.S. Ramasamy, Advocate sr 50729.

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PVS (CO)
sp(29/08/2017)