IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE **S.MANIKUMAR**
and
THE HONOURABLE MR.JUSTICE **R.PONGIAPPAN**

C.M.A.No.3401 of 2017

The Commissioner of Central Excise,
Coimbatore. .. Petitioner

Vs.

M/s.Sri Krishna Logistics,
T/F-4, Parsan Prashant,
38, G.K.Sundaram Street,
Coimbatore 641 038. .. Respondent

Civil Miscellaneous Appeal filed against the Final Order No.142 of 2007, dated 16.02.2007, passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Shastri Bhavan (Annexe), Chennai 600 006.

For Petitioner : Mr.A.P.Srinivas

ORDER
(Order of this Court was made by **S.MANIKUMAR, J.)**

Challenge in this Civil Miscellaneous Appeal is to the order made in Final Order No.142 of 2007, dated 16.02.2007, passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Shastri Bhavan (Annexe), Chennai 600 006.

2. Shorts facts leading to the appeal are that M/s.Sri Krishna Logistics, Coimbatore, are licensed Customs House Agent (CHA), under Licence No.CHA/CBE/08/2004, issued by the Commissioner of Customs and Central Excise, Coimbatore, under Regulation 9 of the CHALR, 2004. The respondent has been transacting business in Mumbai Customs Zone, under CHA Licence No.11/1134, issued under Regulation 10(2) of CHALR, 1984 (Now Regulation 9(2) of the CHALR, 2004). Noticing that two employees of CHA had collected illegal gratification in the name of Customs staff of Customs House at Nhavasheva (Mumbai), the Commissioner of Customs, Mumbai, ordered suspension of CHA Licence No.11/1134 and the fact was communicated to the Commissioner of Customs, Coimbatore, vide letter F.No.SG/Misc-103/2006-CIU JNCH, dated 04.10.2006, for action. Pursuant to which, after adhering to the principles of natural justice, the Commissioner of Customs and Central Excise, Coimbatore, suspended the operation of their CHA Licence No.08/2004, within Coimbatore Customs Formations, for a period of 6 months, with effect from 13.10.2006, vide order, dated 07.11.2006.

3. Being aggrieved by the same, the respondent/CHA has filed

Appeal No.C/482/2016, on the file of the CESTAT, Chennai. After considering the rival submissions, the CESTAT, Chennai, vide Final Order No.142 of 2007, dated 16.02.2007, at Paragraphs 5 to 8, ordered as hereunder:

> "5. In the absence of Form-C intimation of Coimbatore-licence, by the appellants, to the Commissioner of Customs, Mumbai, the rights and obligations of the CHA under that licence did not operate within the jurisdiction of the Commissioner of Customs, Mumbai. Similarly, in the absence of Form-C intimation of the Mumbai-licence to the Commissioner of Customs, Coimbatore, the rights and obligations of the appellants under that licence did not have any operation within the jurisdiction of the Commissioner of Customs, Coimbatore. In this scenario, as rightly pointed out by ld. counsel, the decision rendered by the Tribunal in the case of *Sindhu Cargo Services Ltd.* (supra) *is* not applicable to the present case.
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> 6. Attached to every CHA licence are certain obligations to be discharged by the licensee. Where the CHA fails to discharge any of these obligations, the licensing authority can suspend the licence pending or in contemplation of enquiry, in appropriate cases. But such enquiry should be undertaken by the Commissioner of Customs who issued the licence or who permitted that the licensee to transact business as CHA within his jurisdiction on the strength of the licence. In the present case, as we

have already noted, the licence issued by the Commissioner of Customs, Coimbatore has never had any operation within the jurisdiction of the Commissioner of Customs, Mumbai in the absence of Form-C intimation of the Coimbatore-licence to the Mumbai Commissioner. Likewise, the licence issued by the Mumbai Commissioner has had no operation within the jurisdiction of the Commissioner of Customs, Coimbatore in the absence of Form-C intimation of the Mumbai-licence to the Coimbatore Commissioner. The two licences have ever been mutually exclusive in operation. Hence, as rightly submitted by ld. counsel, it was not open to the Commissioner of Customs, Coimbatore to suspend the operation of the licence issued by him to the appellants, on any ground relatable to the field of operation of the licence issued to them by the Commissioner of Customs, Mumbai. Therefore, the impugned order, wherein ld. Commissioner of Customs, Coimbatore confirmed his suspension order on the sole ground that two employees of the CHA had committed certain offence within the field of operation of the licence issued by the Commissioner of Customs, Mumbai, cannot be sustained in law.

7. After conclusion of hearing in the case, it was mentioned by the appellants' counsel that the order of the Commissioner of Customs, Mumbai, suspending licence No.11/1134 ibid had since been set aside by the Tribunal and the matter remanded to the Commissioner. It was also mentioned that the Commissioner had subsequently passed

fresh order confirming suspension of the licence. We have perused the said orders of the Tribunal (West Zonal Bench) and the Commissioner of Customs, Mumbai, produced by the advocate. These proceedings relating to the "Mumbai licence" have no bearing on the issue which we have settled in this order.

8. In the result, the impugned order is set aside and the appeal is allowed."

4. Being aggrieved by the same, M/s.Sri Krishna Logistics, Coimbatore, has filed an Application No.C/ROM/25/07, for rectification. After considering the rival submissions, the CESTAT, Chennai, vide Miscellaneous Order No.402 of 2007, dated 17.05.2007, ordered as hereunder:

"....The basic question which arose before us out of the arguments of the two sides was whether the licence issued to the CHA by the Coimbatore Commissioner and the one issued to them by the Mumbai Commissioner were independent licences mutually exclusive in operation. We answered this question in the affirmative after a detailed examination of the facts of the case. We found that both the licences were issued under the relevant provisions of CHALR, 1984 and the same were renewed from time to time. When CHALR, 1984 were in force, we found, a CHA was required to take a licence to transact business in every

Customs House/Customs Station. Under the new Regulations, we found, a CHA could transact business in one Customs Station on the strength of licence issued to him by the Commissioner of another Customs Station provided he was permitted to do so by the Commissioner of the former station. This regime came into vogue only in 2004. After noting these provisions of law and practice, we took the aforesaid view and, accordingly, held that the Coimbatore-licence was independent of the Mumbai-licence and, therefore, any ground or reason for suspension of the Mumbai-licence was extraneous to the Coimbatore-licence. It was on this basis that we set aside the applicant-Commissioner's order.

2. The present application states, *inter alia,* that certain fact mentioned in Order No.20/06 dt. 19.10.06 of the Commissioner of Customs, Mumbai had not received our attention while passing the Final order. The relevant statement of the applicant-Commissioner reads as under :-

"In the Order No.20/2006, dated 09.10.2006 of the Commissioner of Customs, Mumbai, <u>a scanned copy of which has been incorporated in Page 6 of the order of Commissioner of Customs, Coimbatore,</u> it is clearly mentioned that the license at Mumbai was granted 'on the basis of holding regular license under Regulation 10(1) of CHALR 1984 [now Regulation 9(1) of CHALR, 2004] at Coimbatore."

The Commissioner has read the order of his Mumbai counterpart as meaning that the Mumbai-licence was granted on the basis of the licence at Coimbatore. But, after a closer scrutiny of records, we have found this statement itself to be factually erroneous inasmuch as what was stated by the Mumbai Commissioner was that a "permission" was granted to the CHA at Mumbai on the basis of the licence held by them at Coimbatore. The further statements contained in the present application are, by and large, in the nature of arguments against our final order. Ld. Commissioner has strenuously endeavoured to construe the provisions of CHALR, 2004. But these arguments and interpretations might be relevant only to an appeal against our order rather than an application of this kind.

3. We took a categorical view on the question of fact as to whether the two licences held by the CHA at Mumbai and Coimbatore were independent and mutually exclusive. This view was taken after a careful examination of the facts of the case. We had even examined the nature of the FORM, which was used by the CHA for obtaining licence from the Mumbai & Coimbatore Commissionerates and also the FORM in which such licences were issued by the two Commissioners. There is no reason, in the present proceedings, to change our decision on the aforesaid question of fact. We repeat that the licences were issued under CHALR, 1984.

4. We have not found any such mistake as pointed out by learned Commissioner, in our final order. The application

is dismissed."

5. Aggrieved by the order made in Final Order No.142 of 2007, dated 16.02.2007, instant Civil Miscellaneous Appeal is filed, on the following substantial questions of law,

> "(a) Whether a CHA licence issued under Regulation 10(2) of CHALR, 1984 on the basis of a regular licence issued under Regulation 10(1) is an extension of the parent licence issued under Regulation 10(1) or whether both the licences are mutually exclusive?
>
> (b) Whether the Tribunal's decision to the contrary is correct in law when the law provides that Commissioner of Customs is empowered to initiate action under Regulation 20(2) of CHALR, 2004, where an enquiry against a CHA is pending or contemplated within his jurisdiction or anywhere else?"

6. Supporting the above, Mr.A.P.Srinivas, learned counsel appearing for the appellant submitted that the observations and findings of CESTAT, is contrary to facts, emerging from the relevant documents, which form part of the documents, relied upon for CHA Licensing by the Commissioners of Customs at Coimbatore and Mumbai. In fact, Mumbai licence No.11/1134 was issued under Regulation 10(2) of CHALR, 1984, on the basis of Regular Licence issued by Commissioner of Customs,

Coimbatore, under Regulation 10(1). Mumbai licence was renewed on the basis of renewal made to the licence at Coimbatore, which is evident from the letter in F.No.S/6-174/99-Admn., dated 11.09.2003, of Mumbai Custom House and the Suspension Order No.20/2006, dated 09.10.2006, issued by the Commissioner of Customs, Mumbai.

7. Learned counsel for the appellant further submitted that issue of CHA Licence, under Regulation 10(2) of erstwhile CHALR, 1984, was considered only, when a CHA held a regular licence under Regulation 10(1), at any other Customs station. In other words, a licence under Regulation 10(2) could be issued only on the basis of an existing Regular licence under Regulation 10(1) which was considered as a parent licence. In this connection, the words "permission to transact business at Mumbai Customs Zone" used by the Commissioner, Mumbai, in his order, dated 09.10.2006, itself is indicative of the fact that the Mumbai licence was not an independent one. CHALR, 1984 did not contain any provisions to allow anybody to transact the business of CHA on the basis of a mere 'permission' unless the person held a valid licence granted under the Regulations. Considering these legal positions, observation of CESTAT in para 2 of Misc. Order No.402/07, dated 17/05/07, that *"what was stated by the Mumbai Commissioner was that* a *permission was granted* to *the*

CHA at Mumbai on the basis of *the licence held by them* at *Coimbatore"* appears to be a totally erroneous finding. He further submitted that the Tribunal ought not to have overlooked the conclusive para of the Mumbai Commissioner's order that orders suspension of "the operation of the CHA licence No.11/1134".

8. Learned counsel for the appellant further submitted that the word 'permission' denotes, nothing but a licence issued under Regulation 10(2). Further, Board vide Circular No.42/04, dated 10/06/2004 has also clarified that licence granted under erstwhile Regulation 10(2) of Custom House Agents Licence Regulations, 1984 would be treated as intimations given and accepted under Regulation 9(2) of CHALR, 2004. Thus, Mumbai-licence, which was issued under Regulation 10(2), had attained the status of an intimation in Form-C prescribed under Regulation 9(2) of CHALR, 2004 and consequently, all the legal obligations under the new Regulations viz, CHALR, 2004 are also applicable to Mumbai licence. Keeping in view the aforesaid aspects of the case, he submitted that the Tribunal has erred in its conclusion that since CHA had not filed any Form-C intimation at Mumbai Customs, the two licences are mutually exclusive in operation. He also reiterated that the order suspending the

CHA licence at Coimbatore was right and within the powers conferred on the Commissioner of Coimbatore, under Regulation 20(2) of CHALR, 2004.

Heard the learned counsel appearing for the parties and perused the materials available on record.

9. Licence No.11/1134, dated 03.12.99 (Mumbai) has been issued under Regulation 10 of the CHALR, 1984 and the same was valid upto 31.12.2003. It was renewed upto 28.09.2004, under Regulation 12(2) of CHALR 1984. Regular Licence No.11/99 has been issued to the CHA on 29.09.1999, for the period upto 28.9.2004, under Regulation 10 of CHALR, 1984 and this licence was not renewed. A fresh regular Licence No.8/2004, dated 6.8.2004, has been issued by the Commissioner of Customs, Coimbatore, under Regulation 9(1) of CHALR, 2004, valid upto 26.07.2014. Under Regulation 9(2) of CHALR 2004, a CHA, who is granted licence, under sub-regulation (1) shall be eligible to work in all Customs stations within the country, subject to intimation in Form-C to the Commissionerate of the concerned Customs Station, where he intends to transact business and is not required to take a separate

licence for transacting business, in such Customs Station. Licence No.8/2004, dated 6.8.2004, issued in Form-B to the respondent, by the Commissioner of Customs, Coimbatore, authorised them to transact business as Customs House Agent, all over India, provided there is an intimation in Form-C, as stated supra, to the Commissionerate of the concerned Customs Station. Apparently, the respondent is working as CHA in Customs House, Chennai, on the strength of the licence, issued by the Commissioner of Customs, Coimbatore. However, no such intimation in Form-C has been given to the Commissioner of Customs, Mumbai, for transacting business.

10. Upon perusal of the same, CESTAT, Chennai, has stated that there is no intimation in Form-C, from the Commissioner of Customs, Coimbatore, to Commissioner of Customs, Mumbai, based on the regular licence. Therefore, CHA has been transacting business, based on the regular Licence No.11/1134, dated 03.12.1999, issued by the Commissioner of Customs, Mumbai. Thus, by observing that in the absence of Form-C intimation from the Commissioner of Customs, Coimbatore to Commissioner of Customs, Mumbai, rights and obligations of CHA, under the abovesaid licence, renewed upto 26.07.2014, would

not operate within the jurisdiction of Mumbai and similarly, in the absence of Form-C intimation of Mumbai-licence to the Commissioner of Customs, Coimbatore, the rights and obligations of the respondent, under that licence would not have any operation, within the jurisdiction of the Commissioner of Customs, Coimbatore, CESTAT, Chennai has set aside the suspension order, issued by the Commissioner of Customs, Coimbatore.

11. While rectification petition was filed, contending inter alia that certain fact mentioned in Order No.20/06, dated 19.10.06 of the Commissioner of Customs, Mumbai had not received the attention of CESTAT, Chennai, while passing the Final order, after scrutiny of the records, CESTAT, Chennai, has found that the statement made therein, itself was factually incorrect and saying so, application for rectification was dismissed.

12. Though Mr.A.P.Srinivas, learned counsel for the appellant has sought for reversal, considering the facts and circumstances of the case, we do not find any ground to reverse the findings of the CESTAT, Chennai. Decision has been rendered by the CESTAT, Chennai, only on

proper appreciation of facts and that therefore, this Court is inclined to dismiss this Civil Miscellaneous Appeal, as no question of law, much less substantial question of law, for consideration, arises in the present appeal.

13. Accordingly, the Civil Miscellaneous Petition is dismissed. No costs.

[S.M.K., J.] [R.P.A., J.]
06.12.2017

Index : Yes/No
Internet : Yes/No
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AND
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