IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:27.09.2018

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THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.5239 of 2018
and
W.M.P.No.6428 of 2018

Shri Manjunatha Cargo Pvt. Ltd.,
Represented by its Director
Mr.T.Raja,
No.6/330, First Floor,
Thambu Chetty Street,
Chennai - 600 001. ... Petitioner

vs.

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

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records of the case from the file of the respondent in F.No.S2/10/2016 dated 09.02.2018, quash the same as bad in law and contrary to the law laid by the Division Bench of this Hon'ble Court in the case of Commissioner of Customs Thoothukudi Vs Daniel and Samuel Logistics Pvt Ltd reported in (2016) 336 ELT 437 (DB).

For Petitioner : Mr.B.Sivaraman

For Respondent : Mr.S.Rajasekar
Standing Counsel

O R D E R

The petitioner is aggrieved against the order of the respondent dated 09.02.2018, prohibiting the operation of the petitioner as Customs House Agent working in any Sections of the Customs Commissionerate and Customs Stations under the jurisdiction of Chennai, Customs Zone, with immediate effect. The impugned proceedings was issued by invoking power under the Regulation of 23 of Customs Broker Licensing Regulation, 2013.

2. Heard the learned counsel appearing for the petitioner and the learned standing counsel appearing for the respondent.

3. The challenge made against the impugned order is mainly on the ground of violation of principles of natural justice. According to the petitioner, the respondent is not entitled to pass the impugned prohibition order without affording an opportunity of hearing to the petitioner by putting them on notice. In support of such contention a Division Bench decision of this Court made in Writ Appeal (MD) No.359 of 2016 dated 03.03.2016, reported in 2016 (336) ELT 437 (Commissioner of Customs, Thoothukudi v. Daniel and Samuel Logistics P.Ltd.,) is relied on.

4. The respondent has filed a counter affidavit and justified the impugned proceedings also by contending that Regulation 23 does not contemplate issuance of any notice before passing the prohibition order.

5. The learned counsel appearing for the respondent, after reiterating the contentions raised in the counteraffidavit submitted further that in the absence of specific provision made under Regulation 23 of the said Regulation for providing opportunity of hearing to the Customs House Agent, the petitioner is not entitled to seek it as a matter of right. He also submitted that even though, the order of the Division Bench of this Court relied on by the petitioner, dealt with the said issue, there are other decisions from other High Courts against the claim of the petitioner.

6. Heard both sides.

7. The order impugned in this writ petition is challenged mainly on the ground of violation of principles of natural justice. The respondent has invoked his power under Regulation 23 of the said Regulations and issued the impugned order.

8. Perusal of the said Regulation 23, no doubt, though indicate that no such notice was contemplated, however, the fact remains that the very same issue was already considered by this Court and the learned single Judge allowed the writ petition on the ground that the order of prohibition was passed in violation of principles of natural justice. When the said order was challenged by the Commissioner of Customs, Thoothukudi, the Division Bench, by its order dated 03.03.2016 confirmed the order of the Writ Court and dismiss the Writ Appeal. The Division Bench has dealt with various decisions and finally came to the conclusion that the order of the Writ

Court need not be interfered with. Para No. 15 to 20 of the Division Bench order reads as follows:

> 15. In a case on hand, the Commissioner of Customs, in exercise of power under Section 23 of the Customs Broker Licensing Regulations, 2013 has issued a total prohibition order prohibiting M/s. Daniel & Samuel Logistics Pvt. Ltd., from working in any section of the Customs Commissionerate and Customs station under the jurisdiction of Chennai Customs Zone, with immediate effect. He has no power to prohibit a Customs Broker from working in a section or all sections, as the case may be, but the question that calls up for consideration is, whether the customs broker should be given an opportunity.
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> 16.On the contention that the Hon'ble Division Bench judgment of the Rajasthan High Court has a binding effect, in Sunitha Venkatram v. Ms. Divya Rayapati, reported in 2015 (2) MLJ (Crl) 385, this Court held as follows:-
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>> "194. Under the Constitutional Scheme, I am empowered to decide, a question of law, independently of what the other High Courts, have decided and for that matter, the decisions of the other High Courts, may have a persuasive value and they do not a binding in the law, to be interpreted and applied to all the persons, to which, the Constitution of India, extends, but that principle, does not mean that a High Court is bound by the decision of another High Court, whether it is of the same strength or of a higher composition.
>>
>> 195. No doubt, Judicial Precedents, across the country should maintain uniformity, and that there should be harmony in deciding a point of law, to be followed, but that does not mean that a High Court cannot decide a question of law, on its own, but have to simply follow the decision,

decided by another High Court. In a given case, when a Central law is interpreted, every High Court is empowered to independently consider, the question of law, dehors the decisions of other High Court.”

17. Each High Court is established under Article 215 of the Constitution of India and it exercised powers under Article 226 and 227. A High Court may consider the decision of other High Courts on a point of law, but under the Constitutional scheme, each High Court has independent power to take a decision on any question of law.

18. Inasmuch as Mr.R.Aravindan, learned Senior Standing Counsel appearing for the appellants urged that the decision of the Rajasthan High Court reported in 2015 (320) E.L.T. 241 (Raj.) (cited supra) should be applied to the instant case, we are of the considered view that the said decision can only be of persuasive value, and not binding on us.

19. Looking at from any angle on the ground urged in this appeal, we are not inclined to accept the challenge made to the order passed by the Writ Court, which has rightly set aside a prohibition order passed by the Commissioner of Customs under Regulation 23 of the Customs Brokers Licensing Regulations, 2013 and granted liberty to the Commissioner of Customs, Chennai-VIII - Commissionerate, Customs Broker Section, law, after providing a reasonable opportunity.

20. In the light of the above discussion and decisions cited supra, Writ Appeal fails and the same is dismissed. No costs. Consequently, C.M.P (MD) No.2269 of 2016 is closed.

9. As the above said decision of the Division Bench of this Court is squarely covering the issue raised in this Writ Petition in favour of the petitioner and no contra decisions of this Court are placed before this Court by the learned counsel appearing for the respondents, this Court is of the view that the petitioner is entitled to succeed, since the

issue raised in this writ petition is squarely covered by the above said Division Bench of this Court in favour of the petitioner.

10. Accordingly, this Writ Petition is allowed and the impugned order is set aside and the matter is remitted back to the respondent for passing fresh order on merits and in accordance with law, after giving opportunity of hearing to the petitioner. Such exercise shall be done by the respondent within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

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

+1cc to Mr.P.Ashok Kumar, Advocate Sr 66945
+1cc to Mr.S.Rajasekar, Advocate S.R.No.67174

KR/17/10/18 W.P.No.5239 of 2018