RESERVED ON : 09.03.2018
DELIVERED ON : 19.03.2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.03.2018

CORAM

THE HON'BLE Mr. JUSTICE M.DURAISWAMY

W.P.No.573 of 2018 and
W.M.P.No.706 of 2018

M/s.Sri Krishna Logistics,
No.52/1, Mannady Street,
Second Floor, Mannady,
Chennai - 600 001
rep by its Authorized Signatory V.R.Babu ... Petitioner

Vs.

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

Petition filed under Article 226 of The Constitution of India praying to issue a writ of certiorari to call for the records of the respondent in F.No.R-742/CBS dated 14.12.2017 leading to issuance of an Order of Prohibition of the petitioner's Customs Broker's Licence under the provisions of Regulation 23 of Customs Brokers Licensing Regulation, 2013.

For Petitioner : Dr.S.Krishnanandh

For Respondent : Mr.T.Pramod Kumar Chopda,
Senior Standing Counsel

O R D E R

The petitioner has filed the above Writ Petition to issue a writ of certiorari to call for the records of the respondent dated 14.12.2017 leading to issuance of an Order of Prohibition of the petitioner's Customs Broker's Licence under the provisions of Regulation 23 of Customs Brokers Licensing Regulation, 2013.

2.The brief case of the petitioner is as follows:

(i)According to the petitioner, they are licensed Customs Broker under Customs Brokers Licensing Regulation, 2013 holding a regular licence issued in terms of Regulation 7(1) of the

Customs Brokers Licensing Regulation 2013 in Form B by the Coimbatore Commissionerate and have been permitted to operate in Chennai, under the jurisdiction of the respondent in terms of Regulation 7(2) of the Customs Brokers Licensing Regulation, 2013. The license is valid upto 30.07.2024.

(ii)The petitioner's responsibilities include handling of import and export cargo for and on behalf of Importers and Exporters through Customs Stations, as defined under Section 2 (13) of the Customs Act. In the course of the business, the petitioner had handled a consignment of import of Porcelain Tiles for and on behalf of M/s.Niti Traders, Mumbai, vide Bill of Entry dated 27.06.2016. However, clearances vide Bills of Entry dated 06.07.2016 and 21.06.2016 have also been attributed to them despite the fact that the petitioner did not handle the clearance of the said consignments. The said import documents pertaining to the said Bills of Entry were handed over to the petitioner for clearance from Customs by Shri Bhavik Shah of M/s.Spanzio Ceramics, who had also given a Letter of Authorization to clear the shipment for and on behalf of M/s.Niti Traders in terms of Regulation 11(a) of the Customs Brokers Licensing Regulation, 2013. It was on such a basis they had handled the said clearances for and on behalf of M/s.Niti Traders.

(iii)The petitioner came to know that M/s.Niti Traders had complained to the Office of the respondent that their Import Export Code (IEC) was misused by 3rd parties in Chennai Customs without their knowledge and consent and they had purportedly further stated that after perusal of some documents received by them, 3 consignments of Porcelain Tiles from China and imported in their Firm's name was cleared at Chennai Customs without knowledge or prior information. In the said circumstances, M/s.Niti Traders submitted copies of Bills of Entry dated 06.07.2016 and 21.06.2016 and copies of Bill of Lading for the said consignments.

(iv)Pursuant to the said complaint received from M/s.Niti Traders, the Special Intelligence and Investigation Branch (SIIB) summoned the Authorized Signatory of the petitioner viz., V.R.Babu. In response to such summons, the Authorized Signatory appeared in person before the Superintendent of the Investigation Branch on 14.10.2016 and deposed to a voluntary statement.

(v)The Investigating Agency also issued summons to Shri Bhavik Shah, S/o.Shri Dinesh H Shah, the owner of M/s.Spanzio Ceramics. In response to the summons, Shri Bhavik D Shah appeared before the Superintendent of SIIB on 24.10.2016 and gave his voluntary statement. On being asked about their relation with M/s.Niti Traders, Mumbai, he interalia stated that he did not know anyone in M/s.Niti Traders. On being asked about the clearance of the consignment in the name of M/s.Niti Traders, he had stated that initially, the supplier Shri Jigar Mehta, Manager of M/s.Foshan Kihut Ceramic Company Limited, China, approached him and enquired about the Customs Agent in Chennai and in turn, he referred the petitioner and that the supplier requested them to clear the materials and do all the process for clearance of cargo and after the clearance, send all the documents to M/s.Niti Traders, Mumbai and requested them to issue the Indian Invoice since they had some issue with M/s.Niti Traders.

(vi)The Investigating Agency also issued summons to M/s.Wan Hai Lines (India) Private Limited, Chennai and they also appeared in person before SIIB and gave their voluntary statement.

(vii)In the meanwhile, the premises of M/s.Spanzio Ceramics were proposed to be searched as Shri Bhavik Shah had stated in his statement that the goods imported were still lying in their godown. Accordingly, the premises of M/s.Spanzio Ceramics was searched in the presence of independent witnesses and found to contain only 2834 cartons of Porcelain Tiles, out of 22048 cartons of Porcelain Tiles imported vide the above referred Bills of Entry. The goods were seized under a Mahazar dated 10.03.2017. Since the cargo was voluminous, a Restraint Order on 10.03.2017 was issued to M/s.Spanzio Ceramics not to move the goods until further orders.

(viii)The Investigating Agency had established the relationship between the supplier M/s.Wan Hai Lines (India) Private Limited and M/s.Spanzio Ceramics, in such a way, that on the instructions of the supplier, M/s.Spanzio had arranged for a Customs Broker viz., the petitioner for clearance of the consignments supposed to have been cleared by M/s.Niti Traders, which is clearly evident from the statement made by the Authorized Signatory of the petitioner.

(ix)On the same set of allegations, a demand-cum-show cause notice under Sections 28 and 124 of the Customs Act was issued by the Additional Commissioner of Customs, SIIB to M/s.Spanzio Ceramics and the petitioner. The petitioner was called upon to show cause as to why penalty should not be imposed on them under the Customs Brokers Licensing Regulation, 2013, in respect of the Bill of Entry dated 27.06.2016. However, in respect of the other 2 Bills of Entry cleared by the petitioner in the name of M/s.Niti Traders (i.e.) Bills of Entry dated 06.07.2016 and 21.06.2016, the petitioner have not been called upon to show cause.

(x)The respondent has come to the conclusion that M/s.Niti Traders has not transacted with M/s.Foshan Kihut Ceramic Company Limited in the import of Porcelain Tiles vide Bills of Entry dated 27.06.2016, 06.07.2016 and 21.06.2016. As per Foreign Trade Policy, the IEC allotted to a person is mandatory for undertaking any import/export policy. The person (i.e.) M/s.Niti Traders, who has been allotted the impugned IEC has not undertaken this import, which amounts to import without valid IEC. The respondent arrived at a conclusion that the petitioner had failed to collect the relevant documents from the importer directly and to verify the identity of their client and in view of the same, they have failed to discharge their obligations as a Customs Broker as required under Regulations 11(a)(d) & (n) of the Customs Brokers Licensing Regulation and passed the order in terms of Regulation 23 of the Customs Brokers Licensing Regulation, prohibiting the petitioner from working in any Section of Chennai Customs Station under the jurisdiction of Chennai Customs Zone. Aggrieved over this order, the petitioner has filed the above Writ Petition.

3.The brief case of the respondent is as follows:

(i)According to the respondent, against the impugned order, there is a remedy by way of Statutory Appeal under Section 129 A of the Customs Act before the Tribunal, available to the petitioner, therefore, the Writ Petition is liable to be dismissed in limine.

(ii)The Prohibition Order passed under Regulation 23 is proper and legally sustainable. There is no delay in the issuance of Prohibition Order in terms of Regulation 23 and more particularly, when there is no mandatory time limit for issuance of the order in terms of Regulation 23.

The petitioner relied upon the Circular on the time limit in the context of Suspension under Regulation 19, whereas, there is no time limit fixed in the Customs Brokers Licensing Regulation 2013 within which the Prohibition under Regulation 23 or Suspension under Regulation 19 is to be done. There is no rider attached to the Prohibition under Regulation 23. The only requirement is that post decisional hearing is to be offered and that is met with in this case. In these circumstances, the respondent prayed for dismissal of the Writ Petition.

4.Dr.S.Krishnanandh, learned counsel appearing for the petitioner submitted that when a time limit is prescribed in Regulation, which empowers action under Regulation 18 by following the procedure in Regulation 20 (1), the mandatory requirement of the limitation cannot be ignored.

5.In support of his contention, the learned counsel relied upon an unreported judgment dated 13.10.2017 made by the division Bench of this Court in C.M.A.No.730 of 2016 [Santon Shipping Services, 18-B, Ceeyum Building, Second Floor, South Raja Street, Tuticorin - 628 008 Vs. The Commissioner of Customs, Customs House, New Harbour Estate, Tuticorin - 628 004 and another] wherein the Division Bench held as follows:

> "...
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> 41.In view of the aforesaid judgments, in our opinion, the issue as to whether the limitation prescribed i.e., 90 days period, under Regulation 22(1) of CHALR 2004, is mandatory or not, is no more res integra.
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> 42.Once the limitation prescribed is mandatory, as has been declared by the courts of law, it cannot be stated that, because of the other issues, that is the merit of the case, this mandatory requirement of the limitation can be ignored."

6.Mr.T.Pramod Kumar Chopda, learned senior standing counsel appearing for the respondent submitted that the petitioner has got remedy by way of an Appeal under Section 129 A(1)(a) of the Customs Act, therefore, the Writ Petition filed by the petitioner, without exhausting the Appeal remedy, is liable to be rejected. Further, the learned senior standing counsel submitted that the judgment relied upon by the learned counsel for the petitioner arose against the order passed by the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), Chennai and therefore, the present Writ Petition filed directly before this Court under Article 226 of the Constitution is liable to be rejected.

7.On a careful consideration of the materials available on record and the submissions made by the learned counsel on either side, the impugned order has been passed prohibiting the petitioner from working in any Section of the Chennai Customs Station under the jurisdiction of Chennai Customs Zone for the reason that the petitioner had failed to collect the relevant documents from the importer directly and to verify the identity of their client and in view of the same, the petitioner has failed to discharge their obligations as Customs Broker as required under Regulation 11 (a), 11 (d) and 11 (n) of the Customs Brokers Licensing Regulation 2013. The respondent also found that a clear prima facie case has been made out against the petitioner and if the petitioner is allowed to continue to operate, it would be detrimental to the interest of the Revenue and therefore, took immediate action against the petitioner to prevent them from misusing the Customs Brokers License.

8.Under Regulation 23 of the Customs Brokers Licensing Regulation, the Commissioner of Customs may prohibit any Customs Broker from working in one or more Sections of the Customs Station, if he is satisfied that such Customs Broker has not fulfilled his obligations as laid down under Regulation 11 in relation to work in that Section or Sections.

9.In the judgment relied upon by the learned counsel for the petitioner, it was a case of Suspension of the license under Regulation 22(1) of the Customs House Agent Licensing Regulations, 2004, wherein, under Regulation 22(1), the Commissioner of Customs shall issue a notice in writing to the Customs House Agent within 90 days from the date of receipt of the offence report, stating the grounds on which it is proposed to suspend or revoke the licence and requiring the said Customs House Agent to submit within 30 days to the Deputy Commissioner of Customs or Assistant Commissioner of Customs, a written statement of defense and also to specify in the statement whether the Customs House Agent desires to be heard in person by the Deputy Commissioner of Customs or Assistant Commissioner of Customs.

10.The judgment was passed in an Appeal in C.M.A.No.730 of 2016, which arose against the order passed by Customs Excise and Service Tax Appellate Tribunal, Chennai, in an Appeal preferred by the Customs Broker as against the order passed by the Commissioner of Customs.

11.In the case on hand, the Order of Prohibition was passed against the petitioner under Regulation 23 of the Customs Brokers Licensing Regulation, 2013 and on a perusal of Regulation 23, it is clear that 90 days period prescribed under Regulation 22(1) of the Customs House Agent Licensing Regulations, 2004, does not find a place. That apart, Regulation 23 of the Customs Brokers Licensing Regulation has not been considered by the Division Bench for the reason that the issue in that Appeal was only in respect of Regulation 22(1) of the Customs House Agent Licensing Regulations, 2004 and not with regard to the Regulations under Customs Brokers Licensing Regulation, 2013. Therefore, the ratio laid down by the Division Bench in the unreported judgment dated 13.10.2017 is not applicable to the present case.

12.The respondent, while passing the impugned order, has specifically stated that the petitioner had failed to collect the relevant documents from the importer and to verify the identity of their client and that they failed to discharge their obligations as Customs Brokers as required under the Regulation 11(a), 11(d) and 11(n) of the Customs Brokers Licensing Regulation. The respondent also found that there is a clear prima facie case made out against the petitioner and that if the petitioner is allowed to continue to operate, it would be detrimental to the interest of the Revenue and hence, took immediate action against the petitioner to prevent them from further misusing the Customs Brokers Licence. The respondent has given cogent reasons for passing the Order of Prohibition under Regulation 23.

13.So far as the alternative remedy is concerned, the petitioner should have filed an Appeal before the Customs, Excise and Service Tax Appellate Tribunal under Section 129 A(1)(a) of the Customs Act as against the impugned order passed by the respondent. When alternative remedy by way of an Appeal is available to the petitioner, they cannot circumvent the filing of the Appeal by filing the present Writ Petition, unless in exceptional circumstances like violation of principles of natural justice.

14.Admittedly, as per the Regulations, the respondent has also given an opportunity of personal hearing to the petitioner after the passing of the impugned order on 14.12.2017. Since there is no violation of principles of natural justice, the petitioner should exhaust the alternative remedy by way of an Appeal under Section 129 A(1)(a) of the Customs Act.

15.In these circumstances, the Writ Petition is liable to be rejected. Accordingly, the Writ Petition is rejected. It is open to the petitioner to file an Appeal before the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) as against the impugned order passed by the respondent in accordance with law. No costs. Consequently, the connected miscellaneous petition is closed.

va

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 M/S.Pramodkumar chopda, Senior Standing counsel for Custom in SR.NO. 20591

+1Cc to M/S.B.Sathish Sundar, Advocate in SR.NO. 21075

Order made in
W.P.No.573 of 2018 and
W.M.P.No.706 of 2018

NRI [CO]
MLT-27/03/2018