

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.A.No.38 of 2018
C.M.P.No.287 of 2018

M/s.Blessings Cargo Care Pvt. Ltd.,
Rep., by its Managing Director,
Shri.R.Ravichandran,
No.1, Ground Floor, 5th Main Road,
Nanganallur, Chennai - 600 061.
Presently at Flat No.2, Ground Floor,
Alpha Caramel Flats,
No.10/6, Dr. Ambedkar Street,
Nanganallur, Chennai - 600 061.

... Appellant /Petitioner

Vs.

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

... Respondent/Respondent

Prayer: Appeal is filed under Section 15 of the Letters Patent,
against the order, dated 08.12.2017, made in W.P.No.27359 of
2017.

WP.No. 27359 of 2017: Petition under Article 226 of the
Constitution of India praying for issuance of Writ of Certiorari
to call for the records pertaining to the impugned order dated
12/10/2017, passed by the respondent in F.No. R-606/CBS and
quash the same.

For Appellant : Mr.Hari Radhakrishnan
For Respondent : Mr.T.Pramod Kumar Chopda

J U D G E M E N T

(Judgement of the Court was made by S.MANIKUMAR, J.)

Challenge, in this writ appeal, is to an order made in
W.P.No.27359 of 2017, dated 18.12.2017, by which, the Writ

Court, dismissed the writ petition and directed the writ petitioner, to submit their reply to the show cause notice, dated 03.11.2017, within a period of 30 days, from the date of receipt of a copy of the said order and upon compliance of the directions contained in paragraph 15 of the show cause notice, the respondent shall adjudicate the show cause notice and pass final orders, as expeditiously as possible, preferably within a period of two months from the date on which, the case is ready for adjudication.

2. Short facts leading to filing of the instant appeal, is as follows:

(i) Appellant company, M/s.Blessing Cargo Care Private Limited, is a Customs Broker holding license bearing No.R-606-CHA, issued by the respondent.

(ii) In the course of business, appellant had filed bills of entry No.2094269, dated 14.06.2017 and Nos.2128764 and 2131930, both dated 17.06.2017, on behalf of the importer, M/s.Benq India Private Limited, for import of goods described as "BenQ Computer LCD Monitor with LED backlight" and classified the same under tariff heading 8528 52 00 and also claimed benefit of Sl.No.17 of Notification No.24/2005-Cus, dated 01.03.2005, which exempts goods classifiable under tariff heading 8528 52, from the levy of duty.

(iii) According to the appellant, tariff heading 8528 52 00, covers monitors, which are capable of directly connecting to and designed for use with an automatic data processing machine (computer). The appellant, adopted the said classification on the instructions of the importer. According to the appellant, for the same importer, the appellant has filed several bills of entry for import of various goods including computer monitors for the past six years and several crores of rupees have been paid as customs duty during such period.

(iv) According to the appellant, the officers of Special Investigation and Intelligence Branch (SIIB), seized the imported goods, vide three mahazars dated 30.06.2017, on the belief that the goods are not designed for use with an automatic data processing machine and that the importer had wrongly availed the benefit of Sl.No.17 of Notification No.24/2005-Cus, dated 01.03.2005.

(v) Subsequently, the appellant approached this Court by way of a writ petition for provisional release of the goods and the goods were released pursuant to the directions issued in the said writ petition.

(vi) Subsequently, the respondent exercising his power conferred under Regulation 19(1) of the Customs Brokers Licensing Regulations, 2013, suspended Customs Broker Licence No.R-606/CBS of the appellant, with immediate effect, as an enquiry against the appellant is contemplated.

(vii) Further, as per Regulation 19(2) of Customs Brokers Licensing Regulations, 2013, an opportunity of personal hearing was granted to the appellant on 28.09.2017. The director of the appellant company along with his counsel appeared for the post decisional hearing and made their submissions.

(viii) After considering the submissions and written reply dated 27.09.2017, submitted during the personal hearing held on 28.09.2017, the respondent passed the order impugned in the writ petition, dated 12.10.2017, continuing the suspension of the appellant's licence with the direction that proceedings under Regulation 20 of the Customs Brokers Licensing Regulations, 2013, will follow. The said order, passed by the respondent, is as follows:

"21. In exercise of the powers conferred under provisions of Regulation 19(2) of the Customs Brokers Licensing Regulations, 2013, I order for continuation of suspension of the License No.R-606/CBS (PAN:AABCP5792L), Blessing Cargo Care Pvt. Ltd., Chennai ordered vide order dated 22.09.2017, until further orders. The Customs Broker is not absolved from all the charges made against them in suspension order dated 22.09.2017 and proceeding under Regulation 20 of the CBLR, 2013 will follow.

22. This order is issued without prejudice to any other action that may be taken against the Customs Broker and their employees/representative etc., under the provisions of the Customs Law or any other law for the time being in force in the Union of India."

3. Aggrieved over the order of the respondent dated 12.10.2017, continuing the suspension of appellant's licence, on a pure classification issue, the appellant, filed writ petition in W.P.No.27359 of 2017, before the Writ Court.

4. The appellant, inter alia, has contended as follows:

(i) Though there is an effective remedy of appeal before the Tribunal, but chosen to challenge the same before the Writ

Court, as the order has been passed by abusing and misusing the power conferred on the respondent and alternate remedy would not be efficacious and effective.

(ii) Regulation No.18 of Customs Brokers Licensing Regulations, provides for revocation of licence or imposition of penalty. That the Commissioner of Customs, may subject to the provisions of the Regulation 20, revoke the licence of the customs broker and order for forfeiture of part or whole of security, or impose penalty not exceeding fifty thousand rupees on a customs broker on any of the grounds mentioned in clauses (a) to (f) being made out.

(iii) In as much as the appellant did not advice their client to comply with the provisions of the Act and failed to exercise due diligence, to ascertain the correctness of the information and even assuming, ultimately, an order has been passed, it can at best be visited with levy of penalty of not exceeding Rupees fifty thousand and it is definitely not a case, where suspension of licence is required to be made pending proceedings under Regulation 20 of Customs Brokers Licensing Regulations.

(iv) It is further submitted that classification of the goods was done based upon the materials, which were given by the client and there is no bar for claiming different classification, as each bill of entry is an independent transaction.

(v) That res judicata does not apply in matters pertaining to tax for different assessment years, because res judicata applies to debar Courts from entertaining issues on the same cause of action, whereas, the cause of cause for each year is distinct.

(vi) That the power under Regulation 19(1) is invokable, where immediate action is necessary to suspend a licence of customs broker. However, in the instant case, licence was suspended after nearly three months after the seizure of goods and such suspension is not warranted.

(vii) That show cause notice under Regulation 20, dated 03.11.2017, has been issued and the appellant is in the process of submitting their reply and the case may be directed to be adjudicated and pending disposal of the proceedings, the order of suspension may be revoked, so as to enable the appellant to carry on the business operation, which has virtually come to a stand still.

5. The respondent, justifying the order of suspension, inter

alia, stated as follows:

(i) The appellant, having already received the show cause notice, dated 03.11.2017, under Regulation 20, should submit their reply to the notice and participate in the proceedings before the respondent and a time frame could be fixed within which such proceedings can be concluded by the respondent.

(ii) That on account of the factual matrix, which has been brought out in a clear manner in the impugned order, suspension of the appellant's customs broker licence is warranted and the respondent has given sufficient reasons in the order dated 22.09.2017, as to why order of suspension was required to be passed under Regulation 19(1) and has given separate and adequate reasons in the impugned order dated 12.10.2017, as to why the order of suspension should continue.

(iii) That this Court will not go into the factual position and examine the sufficiency of the reasons for placing the appellant's licence under suspension as the respondent has considered the factual situation, examined the conduct of the appellant and after affording full and effective opportunity, has passed the order continuing the suspension and as such, there is no error in the same.

(iv) That the impugned order clearly states that the appellant has not been absolved from all the charges made against them in the suspension order dated 22.09.2017 and proceedings under Regulation 20 will follow.

(v) That the interpretation given by the appellant that at best only penalty not exceeding rupees fifty thousand alone can be imposed is not tenable, as the proceedings under Regulation 20, is in the show cause notice stage.

(vi) That there can be no res judicata in tax matters and the importer is entitled to adopt different classification for each bill of entry, it is submitted that the Court should take into consideration the facts of the case, which has been dealt with by the respondent, while continuing the order of suspension and as to how the word "computer" was inserted in the bill of entry, thereby, failing in their obligation contemplated under Regulation 9 of the Customs Brokers Licensing Regulations.

(vii) In respect of identical product, the classification adopted by the very same importer, whose import was handled by the appellant, was not accepted and the order was confirmed by the Commissioner of Appeals, dated 30.07.2017 and in spite of having knowledge of the said order, the appellant has filed the bill of entry by adding the word 'computer' with a view to avail

the unintended benefit of the notification and this has resulted in passing the order continuing the suspension. On the above submissions, the learned counsel prayed for sustaining the order continuing suspension.

6. After hearing the learned counsel for the parties, the Writ Court, vide order, dated 08.12.2017, at Paragraphs 8 to 13, held as follows:

"8. In Commissioner of Customs vs. K.M.Ganatra & Company reported in (2016) 4 SCC 687, the Hon'ble Supreme Court quoted the observation of CEGAT, West Zonal Bench, Mumbai, with regard to the role of a Customs House Agent like the petitioner. It was pointed out that the Customs House Agent (CHA) occupies the very important position in the customs house. The customs procedures are complicated. The importers have to deal with a multiplicity of agencies namely carriers, custodians like BPT as well as the Customs. The importer would find it impossible to clear his goods through its agencies without wasting valuable energy and time. The CHA is supposed to safeguard the interests of both the importers and the customs. A lot of trust is kept in CHA by the importers/exporters as well as by the government agencies. To ensure appropriate discharge of such trust, the relevant regulations are framed. Regulation 14 of the CHA Licensing Regulations lists out obligations of the CHA. Any contravention of such obligations even without intent would be sufficient to invite upon the CHA, the punishment listed in the Regulations. This being the level of trust and confidence imposed on a customs broker, who has been issued a licence under the relevant Regulation, it has to be seen as to whether the impugned order of suspension under Regulation 19(2) of the Act, is sustainable or not. Regulation 19 of the CBLR, deals with suspension of licence. Regulation 19(1) states that notwithstanding anything contained in regulation 18, the Commissioner of Customs may, in appropriate cases where immediate action is necessary, suspend the licence of a Customs Broker, where an enquiry against such agent is pending or contemplated. Regulation 19(2) states that where a licence is suspended under sub-

regulation (1), the Commissioner of Customs shall, within fifteen days from the date of such suspension, give an opportunity of hearing to the Customs Broker whose licence is suspended and may pass such order as he deems fit either revoking the suspension or continuing it, as the case may be, within fifteen days from the date of hearing granted to the Customs Broker. Proviso in Regulation 19 states that provided that in case the Commissioner of Customs passes an order for continuing the suspension, the further procedure thereafter shall be as provided in regulation 20. In the instant case, the power under Regulation 19(1), was invoked as in the opinion of the Commissioner of Customs, it was found that it is an appropriate case, where immediate action is necessary. In terms of sub-Regulation (2) of Regulation 19, opportunity of hearing was granted to the petitioner which was availed and the Commissioner has passed the impugned order continuing the suspension and stating that proceedings will be initiated under Regulation 20. In accordance with the said observations, show cause notice dated 03.11.2017 has been issued and received by the petitioner.

9. Mr.C.Natarajan submitted that it is alleged that the petitioner has contravened Regulation 11A(d)(e). Both these alleged violations cannot visit the petitioner with the penalty of revocation of licence, which is clear from reading of regulation 18. It is submitted that the grounds mentioned in clauses (a) to (f) in Regulation 18 are the grounds for revocation of licence or imposing of penalty. It is a submission that if a Customs Broker has committed violations contemplated under clauses (c) to (f), it would undoubtedly result in an order of revocation whereas, if Customs Broker contravenes clauses (a) & (b) of Regulation 18, it would be a case for imposition of penalty, which cannot be more than Rupees Fifty Thousand and therefore, the petitioner's licence could not have been placed under suspension. The submission made on behalf of the petitioner cannot be

countenanced, as Regulation 18 provides for the grounds of revocation of licence or imposition of penalty. It may be incorrect to read something which is not contained in the Regulation and to state that the violations of clauses (a) & (b) can invite only a penalty and violations of clauses (c) to (f) will definitely result in revocation. The manner in which Regulation is interpreted is incorrect, as it is the adjudicating authority, who has to take a decision in the matter as to what is the nature of punishment to be imposed on the CHA. Therefore, this Court does not agree with the submissions made on behalf of the petitioner that assuming it is established that there is violation of clauses (a) & (b) of Regulation 18, the maximum that can happen to the petitioner is imposition of penalty and therefore, suspension should be revoked. If such interpretation given by the petitioner is to be accepted then Regulation 18 has to be reworded to state that violation of clauses (a) & (b) would be construed as a minor penalty warranting a minor punishment of fine and violation of clauses (c) to (f) would be a major penalty warranting revocation, as a major punishment. Such interpretation is impermissible and there is no room provided under the Regulation to accept such a stand.

10. There can be no dispute over the settled legal position that there is no res judicata in matters pertaining to tax for different assessment years. However, the facts of the present case, calls for a different approach. The allegation against the petitioner was that in the bill of entry, the word 'computer', was deliberately added to the item "description of goods", at the behest of the importer in violation of Section 46(4) of the Customs Act, with a view to claim duty exemption benefit. At the first blush, it appears the insertion of word "computer", in the bill of entry, though alleged to be deliberate, cannot be construed as a serious matter. However, what is important to note is that the petitioner has been the Customs Broker for the importer for

several years, they have been handling identical products for the very same importer and effecting clearances through Chennai Port. One such consignment covered in bill of entry dated 21.02.2011, was subject of check with regard to the classification adopted by the petitioner, the Customs Broker of the importer. As in the instant case, the classification was done as monitors of a kind solely or principally used in automatic data processing system under 8471. This classification was not accepted by the Department and an Order-in-Original, dated 18.01.2012, was passed, rejecting the petitioner's classification and classifying the goods under 85285900. The importer filed appeal before the Commissioner of Appeals, which was dismissed by order dated 30.07.2014. This order has attained a finality, as no appeal was preferred against the order within the permitted time. It appears that subsequently, the petitioner has been handling the very same consignments and effecting clearances for the very same importer through the Mumbai Port. After lapse of about two years, the present bill of entry has been filed. The petitioner does not plead ignorance or lack of knowledge of the order-in-original, dated 18.01.2012, confirmed in order-in-appeal, dated 30.07.2014, in respect of an identical consignment. In such circumstances, it has to be seen as to what is the duty cast upon a Customs Broker, as it has been held that he is supposed to safeguard the interest of both the importers and the Customs.

11. Regulation 11 lists out the obligations of a Customs Broker and one such obligation is to advice the client to comply with the provisions of the Act and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or the Assistant Commissioner of Customs. Further, he is required to exercise due diligence to ascertain the correctness of any information, which he imparts to a client with reference to any work related to clearance of cargo or backage. Thus, there was a duty on the part of the petitioner to

advice his client that they would not be justified in adopting a different classification of the goods having failed in the earlier attempt resulting in an order which has attained finality. The explanation which was offered by the petitioner stating that they had adopted it, as it was an industry terminology and it was based on the catalogue/technical specification sheet. The officer, who investigated the matter, has recorded that the statement of the importer that they had added the word "computer" based on the catalogue/technical specification sheet was found to be factually incorrect, as the catalogue/technical specification sheet produced by them along with the import documents through the petitioner before the customs do not portray the LED monitor as computer monitor. Thus, the respondent stated that the petitioner failed in his obligations contemplated under Regulation 11 by adding the word "computer", to the 'item description' without seeking proper explanation from the importer, thereby violating Section 46(4) of the Customs Act. In such circumstances, it cannot be stated that the respondent did not properly exercise its discretion, while suspending the petitioner's licence under Regulation 19(1), nor it can be stated that the interpretation given by the respondent was either perverse or arbitrary not to bring the petitioner's case within the ambit of "appropriate case in Regulation 19(1)".

12. It was further submitted that Regulation 19(1) could have been invoked only where immediate action is necessary and in the instant case, the order was passed on 22.09.2017, after nearly three months from the date of seizure of the consignment. The term "immediate" occurring in Regulation 19(1) should be interpreted in the context of the CBLR and therefore, there would be no room for adopting dictionary meaning for the word "immediate" occurring in Regulation 19(1). The bills of entry were filed by the petitioner on 17.06.2017. The goods were seized on 30.06.2017, after which statement was recorded from the Managing Director of

the petitioner on 17.07.2017, statement was recorded from the authorised representative of the importer on 18.07.2017 and the order of suspension was passed on 22.09.2017, invoking regulation 19(1). Thus, this Court finds that there is no inordinate or unexplained delay warranting the case to be taken out of the purview of a case for immediate suspension. Thus, considering the conduct of the petitioner and the facts, the first respondent has exercised his powers and found the petitioner's case to be an appropriate case for immediate suspension. After the petitioner was afforded an opportunity, he was given a hearing and the order of suspension has been directed to be continued and the reasons assigned in the impugned order are just and germane to the allegations made against the petitioner. However, the impugned proceedings is only an order of suspension and procedure under Regulation 20, is to follow for which already show cause notice has been issued.

13. Thus, for all the above reasons, the petitioner has not made out any case for interference with the impugned order. Accordingly, the Writ Petition fails and it is dismissed. The petitioner is directed to submit their reply to the show cause notice, dated 03.11.2017, within a period of 30 days from the date of receipt of a copy of this order and upon compliance of the directions contained in paragraph 15 of the show cause notice, the respondent shall adjudicate the show cause notice and pass final orders as expeditiously as possible, preferably within a period of two months from the date on which, the case is ready for adjudication. It is made clear that the show cause notice issued under Regulation 20 shall be adjudicated by the respondent without being in any manner influenced by the observations made by this Court in this order. No costs. Consequently, connected Miscellaneous Petitions are closed."

7. Being aggrieved by the order passed by the Writ Court, directing the appellant to submit their reply to the show cause notice, dated 03.11.2017, within a period of 30 days, from the

date of receipt of a copy of the Writ Court order and upon compliance of the directions contained in paragraph 15 of the show cause notice, the respondent shall adjudicate the show cause notice and pass final orders as expeditiously as possible, preferably within a period of two months from the date on which, the case is ready for adjudication, the appellant has filed the instant writ appeal.

8. Mr. Hari Radhakrishnan, learned counsel for appellant, briefly submitted the facts of the case, referred to the relevant provisions of the Act, regulations framed, and assailed the order of the Writ Court, inter alia, as follows:

(i) That the order of respondent is liable to be set aside for non-adherence of the mandatory time limit prescribed in Regulation 19(2) of the Customs Brokers Licensing Regulations.

(ii) That the suspension of a licence under Regulation 19 of Customs Brokers Licensing Regulations can be ordered where 'immediate action' is necessary. There is absolutely no threat to the interest of the Revenue if the appellant continues to function as a Customs Broker. The issue involved is a dispute regarding the correct classification of the goods namely whether the goods are 'computer monitors' or 'TV monitors'. Regulation 19 specifically requires that suspension can only be justified where immediate action is necessary. The respondent failed to justify the necessity to take 'immediate action' against the appellant. The continuation of suspension has not been supported by reasons.

(iii) The appellant would sustain irreparable injury if the order of suspension is to continue for the reason that if and when the appellant is absolved of all charges under Customs Brokers Licensing Regulations, the appellant, cannot be compensated for the loss sustained, by him, till such time.

(iv) After suspension of licence, the respondent is bound to follow the procedure set out under Regulation 20 of Customs Brokers Licensing Regulations, 2013. The said procedure mandates issuance of a show cause notice, appointment of inquiry officer, submission of report by the inquiry officer and final decision by Commissioner. After detailed inquiry, the licensing authority may either revoke the licence or revoke the suspension of the licence or impose penalty, which cannot exceed Rs.50,000/-. Only in cases which justify revocation of licence can initial suspension of licence be justified. In cases where only a penalty is warranted, the initial suspension of licence will cause irreparable injury to the licensee.

(v) The only ground stated by the respondent for continuing

the order of suspension is that the appellant had wrongly classified the goods in question despite the existence of order-in-appeal No.1323 of 2014, dated 30.07.2014, passed against the importer M/s.BenQ India Pvt. Ltd, by the Commissioner of Customs (Appeals), Chennai. The appellant has clearly stated before the respondent, during post-decisional hearing, that they were not aware about the existence of the said order-in-appeal and that the importer had filed an appeal against the said order before CESTAT, Chennai on 03.08.2017.

(vi) That the appellant was not the Customs Broker for the previous imports made by the importer, which was the subject matter of the order-in-original No.18158/12 dated 18.02.2012 and order-in-appeal No.1323 of 2014 dated 30.07.2014.

(vii) That identical/similar goods have been imported by the very same importer, M/s.BenQ India Pvt. Ltd., through the ports of Chennai and Mumbai and the Customs have accepted the classification of the goods under CTH 8528 52 00 and the Department has also extended the benefit of Sl.No.17 of Notification No.24/2005-Cus dated 01.03.2005, which exempts goods classifiable under tariff heading 8528 52 from levy of duty.

(viii) That the copies of the checklist pertaining to three bills of entry in question along with the email received from the importer confirming the description of the goods and other particulars were submitted to the respondent during the post-decisional hearing held on 28.09.2017. This clearly establishes that the appellant performed their role as a Customs Broker by forwarding the details as furnished by the importers. Further, the declaration was made on the bill of entry based on the instructions of the importer as contained in their letter dated 03.01.2017 and 01.06.2017.

(ix) That the appellant filed the bill of entry after ascertaining the description of the imported monitor from the importer. The technical specification vouched to the truth of declaration made by the importer.

(x) That the appellant filed the bill of entry claiming exemption in good faith based on importer's explanation, technical specification and exemption granted by Mumbai Customs for several imports made by various parties. In such circumstances, even if it is decided that the exemption is not to be granted, the appellant cannot to be penalized as abetter.

(xi) That the allegation is the result of mis-conception on the part of the Customs as to use of LCD monitors under import. The appellant states that they are all monitors for use with ADP

system. In fact, it is admitted in the show cause notice issued under the Customs Act that the monitors are capable of being "connected with personal computers/laptops".

(xii) That the commercial understanding is that the monitors in question are all computer monitors. It is needless to say that commercial understanding has a role in the matter of classification of goods. The Hon'ble Supreme Court's observation in the matter of classification of V.P.Latex Dunlop India Ltd - 1983 (13) ELT 1566 (SC) is relevant - the importer said it was 'rubber' but the Government said it was 'synthetic resin'.

(xiii) That the power of suspension under Regulation 19 is an exception limited to "appropriate cases where immediate action is necessary" and is not justified in the present case.

(xiv) That para 14 of the order issued under Regulation 19 (1) would neither justify immediacy of suspension nor grounds for suspension. The question as to whether the classification of the goods adopted by an importer involves loss of revenue or that the act of the petitioner is detrimental to the interest of Revenue is a matter to be decided only after adjudication of the notice issued under Section 28 of the Customs Act, 1962 and prayed for revocation of the suspension of licence.

9. Mr.T.Promod Kumar Chopda, learned counsel appearing for the respondent, made submissions to sustain the impugned order of the Writ Court.

10. Heard the learned counsel appearing for the parties, perused the materials available on record as well as the impugned order passed by the learned Single Judge.

11. At the outset, we would like to state that though Mr.Hari Radhakrishnan, learned counsel for the appellant, urged this Court to entertain the appeal, we are not inclined to do so for the reason that, on more than one occasion, the Hon'ble Supreme Court, as well as this Court, held that, ordinarily, writ petition should not be entertained when the Statutes provide for an effective and alternative remedy, more so, in revenue matters. Reference can be made to few decisions, in this regard.

11.1. In Union of India v. T.R.Verma, AIR 1957 SC 882, the Hon'ble Supreme Court held that it is well settled that when an alternative and equally efficacious remedy is open to a litigant, he should be required to pursue that remedy and not to invoke the special jurisdiction of the High Court to issue a prerogative writ. It will be a sound exercise of discretion to

refuse to interfere in a petition under Article 226 of the Constitution, unless there are good grounds to do, otherwise.

11.2. In C.A.Ibrahim v. ITO, AIR 1961 SC 609, H.B.Gandhi v. M/s. Gopinath & sons, 1992 (Suppl) 2 SCC 312 and in Karnataka Chemical Industries v. Union of India, 1999 (113) E.L.T. 17 (SC) : 2000 (10) SCC 13, the Hon'ble Supreme Court held that where there is a hierarchy of appeals provided by the statute, the party must exhaust the statutory remedies before resorting to writ jurisdiction.

11.3. The general principles of law to be followed while entertaining a writ petition, when an alternative remedy is available, as per the decision of the Hon'ble Apex Court in U.P.State Spinning Co. Ltd. Vs. R.S.Pandey and Another (2005) 8 SCC 264, at para No.11 are as follows:

"Except for a period when Article 226 was amended by the Constitution (Forty-Second Amendment) Act, 1976, the power relating to alternative remedy has been considered to be a rule of self-imposed limitation. It is essentially a rule of policy, convenience and discretion and never a rule of law. Despite the existence of an alternative remedy it is within the jurisdiction or discretion of the High Court to grant relief under Article 226 of the Constitution. At the same time, it cannot be lost sight of that though the matter relating to an alternative remedy has nothing to do with the jurisdiction of the case, normally the High Court should not interfere if there is an adequate efficacious alternative remedy. If somebody approaches the High Court without availing the alternative remedy provided, the high Court should ensure that he has made out a strong case or that there exist good grounds to invoke the extraordinary jurisdiction."

11.4. In United Bank of India Vs. Satyawati Tondon and Others {(2010) 8 SCC 110}, the Hon'ble Apex Court, at paragraph Nos.43 to 45, held as follows:-

"43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is

available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc., the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they do not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the high Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

44. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution.

45. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under

Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision etc., and the particular legislation contains a detailed mechanism for redressal of his grievance."

11.5. In Nivedita Sharma Vs. Cellular Operators Association of India and Others {(2011) 14 Supreme Court Cases 337}, the Hon'ble Apex Court held that,

"An alternative remedy is not a bar to the entertaining of writ petition filed for the enforcement of any of the fundamental rights or where there has been a violation of the principles of natural justice or where the order under challenge is wholly without jurisdiction or the vires of the statute are under challenge. The Court has recognised some exceptions to the rule of alternative remedy. However, the high Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal or grievance still holds the field."

11.6. The Hon'ble Apex Court, after considering a catena of cases, in Shauntlabai Derkar and Another Vs. Maroti Dewaji Wadaskar {(2014) 1 Supreme Court Cases 602}, at para Nos.15 to 18, held as follows:-

"15. Thus, while it can be said that this Court has recognised some exceptions to the rule of alternative remedy i.e, where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal Case {Thansigh Nathmal Vs. Supt. of Taxes, AIR 1964 SC 1419}, Titaghur Paper Mills Case {Titaghur Paper Mills Co. Ltd

Vs. State of Orissa (1983) 2 SCC 433} and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.

16. In the instant case, the Act provides complete machinery for the assessment/reassessment of tax, imposition of penalty and for obtaining relief in respect of any improper orders passed by the Revenue Authorities, and the assessee could not be permitted to abandon that machinery and to invoke the jurisdiction of the High Court under Article 226 of the Constitution when he had adequate remedy open to him by an appeal to the Commissioner of Income Tax (Appeals). The remedy under the statute, however, must be effective and not a mere formality with no substantial relief. In Ram and Shyam Co. Vs. State of Haryana (1985) 3 SCC 267, this Court has noticed that if an appeal is from "Caesar to Caesar's wife", the existence of alternative remedy would be a mirage and an exercise in futility.

17. In the instant case, neither has the writ petitioner/assessee described the available alternate remedy under the Act, as ineffectual and non-efficacious while invoking the writ jurisdiction of the High Court nor has the High Court ascribed cogent and satisfactory reasons to have exercised its jurisdiction in the facts of the instant case. In light of the same, we are of the considered opinion that the writ Court ought not to have entertained the writ petition filed by the assessee, wherein he has only questioned the correctness or otherwise of the notices issued under Section 148 of the Act, the reassessment orders passed and the consequential demand

notices issued thereon.

18. In view of the above, we allow this appeal and set aside the judgment and order passed by the High Court in Chhabil Dass Agarwal Vs. Union of India {W.P.(c) No.44 of 2009, decided on 5/10/2010}. We grant liberty to the respondent, if he so desires, to file an appropriate petition/appeal against the orders of reassessment passed under Section 148 of the Act within four weeks' time from today. If the petition is filed before the appellate authority within the time granted by this Court, the appellate authority within the time granted by this Court, the appellate authority shall consider the petition only on merits without any reference to the period of limitation. However, it is clarified that the appellate authority shall not be influenced by any observation made by the High Court while disposing of Writ Petition (Civil) No.44 of 2009, in its judgment and order dated 5/10/2010."

11.7. After considering a plethora of judgments, in Union of India and Others Vs. Major General Shri Kant Sharma and Another {(2015) 6 SCC 773}, at para 36, the Hon'ble Apex Court held as follows:-

"The aforesaid decisions rendered by this Court can be summarised as follows:-

(i) The power of judicial review vested in the High Court under Article 226 is one of the basic essential features of the Constitution and any legislation including the Armed Forces Tribunal Act, 2007 cannot override or curtail jurisdiction of the High Court under Article 226 of the Constitution of India (Refer: L.Chandrakumar Vs. Union of India (1997) 3 SCC 261 and S.N.Mukherjee Vs. Union of India (1990) 4 SCC 594.

(ii) The jurisdiction of the High Court under Article 226 and this Court under Article 32 though cannot be circumscribed by the provisions of any enactment, they will certainly have due regard to the legislative intent evidenced

by the provisions of the Acts and would exercise their jurisdiction consistent with the provisions of the Act (Refer: Mafatlal Industries Ltd., Vs. Union of India (1997) 5 SC 536.

(iii) When a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation. (Refer: Nivedita Sharma Vs. Cellular Operators Assn. of India (2011) 14 SCC 337.

(iv) The High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance. (Refer: Nivedita Sharma Vs. Cellular Operators Assn. of India (2011) 14 SCC 337.)"

11.8. In Veerappa Pillai Vs. Raman & Raman Ltd {1952 SCR 583}, CCE Vs. Dunlop India Ltd {(1985) 1 SCC 260}, Ramendra Kishore Biswas Vs. State of Tripura {(1999) 1 SCC 472}, Shivgonda Anna Patil Vs. State of Maharashtra {(1999) 3 SCC 5}, C.A.Abraham Vs. ITO {(1961) 2 SCR 765}, Titaghur Paper Mills Co Ltd., Vs. State of Orissa {(1983) 2 SCC 433}, H.B.Gandhi Vs. Gopi Nath & Sons {1992 Supp (2) SCC 312}, Whirlpool Corpn Vs. Registrar of Trade Marks {(1998) 8 SCC 1}, Tin Plate Co. of India Ltd., Vs. State of Bihar {(1998) 8 SCC 272}, Sheela Devi Vs. Jaspal Singh {(1999) 1 SCC 209} and Punjab National Bank Vs. O.C.Krishnan {(2001) 6 SCC 569}, this Court held that where hierarchy of appeals is provided by the Statute, the party must exhaust the statutory remedies before resorting to writ jurisdiction.

12. During the course of hearing of the instant appeal, Mr.Hari Radhakrishnan, learned counsel for the appellants, stated that show cause notice under Regulation 20 of the Customs Brokers Licensing Regulations, 2013, dated 03.11.2017, has been issued and the appellants on receipt of the notice, is in the process of submitting their reply, to the proceedings under Regulation 20, which itself fortifies the views of the Writ Court, that matter requires adjudication by the appropriate authority.

13. As regards the contention of the learned counsel for the appellant with regard to non-adherence of the mandatory provisions prescribed under the Customs Brokers Licensing Regulations, 2013, we deem it fit to have a cursory look of the said Regulations:

"11. Obligations of Customs Broker.-

A Customs Broker shall -

(a)

(b)

(c)

(d) advise his client to comply with the provisions of the Act and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;

(e) exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage;

.....

xxx

18. Revocation of licence or imposition of penalty.-

The Commissioner of Customs may, subject to the provisions of regulation 20, revoke the licence of a Customs Broker and order for forfeiture of part or whole of security, or impose penalty not exceeding fifty thousand rupees on a Customs Broker on any of the following grounds, namely :

(a) failure of to comply with any of the conditions of the bond executed by him under regulation 8;

(b) failure to comply with any of the provisions of these regulations, within his jurisdiction or anywhere else;

(c) committing any misconduct, whether within his jurisdiction or anywhere else which in the opinion of the Commissioner renders him unfit to transact any business in the Customs Station;

(d) adjudicated as an insolvent;

(e) of unsound mind; and

(f) has been convicted by a competent court for an offence involving moral turpitude :

Provided that the imposition of penalty or any action taken under these regulations shall be without prejudice to the action that may be taken against the Customs Broker or his employee under the provisions of the Customs Act, 1962 (52 of 1962) or any other law for the time being in force.

19. Suspension of licence.-

(1) Notwithstanding anything contained in regulation 18, the Commissioner of Customs may, in appropriate cases where immediate action is necessary, suspend the licence of a Customs Broker where an enquiry against such agent is pending or contemplated.

(2) Where a licence is suspended under sub-regulation (1), the Commissioner of Customs shall, within fifteen days from the date of such suspension, give an opportunity of hearing to the Customs Broker whose licence is suspended and may pass such order as he deems fit either revoking the suspension or continuing it, as the case may be, within fifteen days from the date of hearing granted to the Customs Broker :

Provided that in case the Commissioner of Customs passes an order for continuing the suspension, the further procedure thereafter shall be as provided in regulation 20.

20. Procedure for revoking licence or imposing penalty.

(1) The Commissioner of Customs shall issue a notice in writing to the Customs Broker within a period of ninety days from the date of receipt of an offence report, stating the grounds on which it is proposed to revoke the licence or impose penalty requiring the said Customs Broker to submit within thirty days to the Deputy Commissioner of Customs or Assistant Commissioner of Customs nominated by him, a written statement of defense and also to specify in the said statement whether the Customs Broker desires to be heard in person by the said Deputy Commissioner of Customs or Assistant Commissioner of Customs.

(2) The Commissioner of Customs may, on receipt of the written statement from the Customs Broker, or where no such statement has been received within the time-limit specified in the notice referred to in sub-regulation (1), direct the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, to inquire into the grounds which are not admitted by the Customs Broker.

(3) The Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, shall, in the course of inquiry, consider such documentary evidence and take such oral evidence as may be relevant or material to the inquiry in regard to the grounds forming the basis of the proceedings, and he may also put any question to any person tendering evidence for or against the Customs Broker, for the purpose of ascertaining the correct position.

(4) The Customs Broker shall be entitled to cross-examine the persons examined in support of the grounds forming the basis of the proceedings, and where the Deputy

Commissioner of Customs or Assistant Commissioner of Customs declines to examine any person on the grounds that his evidence is not relevant or material, he shall record his reasons in writing for so doing.

(5) At the conclusion of the inquiry, the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, shall prepare a report of the inquiry and after recording his findings thereon submit the report within a period of ninety days from the date of issue of a notice under sub-regulation (1).

(6) The Commissioner of Customs shall furnish to the Customs Broker a copy of the report of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, and shall require the Customs Broker to submit, within the specified period not being less than thirty days, any representation that he may wish to make against the said report.

(7) The Commissioner of Customs shall, after considering the report of the inquiry and the representation thereon, if any, made by the Customs Broker, pass such orders as he deems fit either revoking the suspension of the license or revoking the licence of the Customs Broker or imposing penalty not exceeding the amount mentioned in regulation 22 within ninety days from the date of submission of the report by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, under sub-regulation (5) :

Provided that no order for revoking the license shall be passed unless an opportunity is given to the Customs Broker to be heard in person by the Commissioner of Customs.

21. Appeal by Customs Broker.-

A Customs Broker, who is aggrieved by any order passed by the Commissioner of Customs under these regulations, may prefer an appeal under section 129A of the Act to the Customs, Central Excise and Service Tax Appellate Tribunal established under sub-section (1) of section 129 of the Act.

22. Penalty.-

A Customs Broker, who contravenes any provisions of these regulations or who fails to comply with any provision of these regulations shall be liable to a penalty which may extend to fifty thousand rupees." (emphasis is ours)

14. We have gone through the Regulations contained in Customs Brokers Licensing Regulations, 2013, the submissions made by the learned counsel on either side and also the order impugned in the instant writ appeal. After considering the rival submissions, Writ Court, while dismissing the writ petition, directed the appellant herein, to submit their reply, to the show cause notice, dated 03.11.2017, within a period of 30 days, from the date of receipt of a copy of the order impugned herein and upon compliance of the directions contained in paragraph 15, of the show cause notice, the respondent shall adjudicate the show cause notice and pass final orders as expeditiously as possible, preferably within a period of two months from the date on which, the case is ready for adjudication. Writ Court has also made it clear that show cause notice issued under Regulation 20, shall be adjudicated by the respondent without being in any manner influenced by the observations made in the order of the Writ Court.

15. We do not find any infirmity or illegality, in the impugned order, passed by the Writ Court, as Courts have time and again, held that where hierarchy of appeals, is provided by the Statute, the party must exhaust the statutory remedies, before resorting to writ jurisdiction. Therefore, we are in agreement, with the decision of the Writ Court, in directing the appellant herein, to work out their remedy as contemplated under Customs Brokers Licensing Regulations, 2013. We further direct the parties to strictly adhere to the time line, framed in the impugned order. We would also like to make it clear that the Appropriate Authority, shall not, in any manner, be influenced, by the observations made by Writ Court, while adjudicating the show cause notice issued under Regulation 20 of Customs Brokers

Licensing Regulations,2013.

16. With the above observations, the Writ Appeal is dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS VI)

//True copy//

Sub Assistant Registrar

dm/kk

To

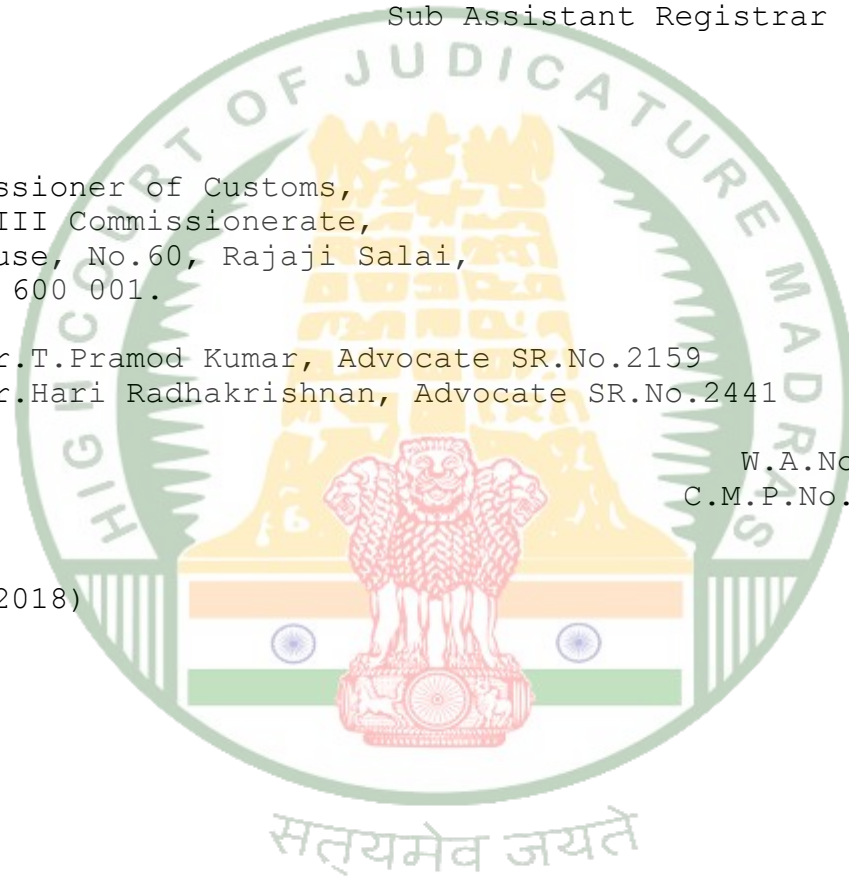
The Commissioner of Customs,
Chennai VIII Commissionerate,
Custom House, No.60, Rajaji Salai,
Chennai - 600 001.

+1cc to Mr.T.Pramod Kumar, Advocate SR.No.2159

+1cc to Mr.Hari Radhakrishnan, Advocate SR.No.2441

W.A.No.38 of 2018
C.M.P.No.287 of 2018

GP(CO)
GN(18/04/2018)



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