IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2018

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.31800 of 2018
and
W.M.P.No.37030 of 2018

M/s. Leona Worldwide Logistics
rep. By its Partner Mr.F.Wilson
Old No.12, New No.15, 1st Floor,
Angappa Naicken Street,
Chennai - 600 001. ...Petitioner

Vs.

The Commissioner of Customs (Chennai-VIII)
Custom 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 relating to the impugned Order-in-Original No.65955/2018 dated 02.11.2018

For Petitioner : Mr.A.Mohamed Ismail

For Respondent : Mrs.Hema Muralikrishnan
Standing counsel

O R D E R

The petitioner is aggrieved against the Order-in-Original dated 02.11.2018 passed by the respondent revoking the Customs Broker Licence of the petitioner, forfeiture of security deposit and imposing penalty. Though an appeal remedy is available against the order impugned in this writ petition, the petitioner seeks to maintain the writ petition on the ground of violation of principles of natural justice as discussed below.

2. The case of the petitioner in short is as follows:

The petitioner is a holder of Customs Broker License and engaged in the customs clearance work. The petitioner filed Bill of Entry No.2574218 dated 24.07.2018 for clearance of consignment. On payment of duty, assessed goods were cleared on 24.08.2017. A show cause notice was issued on 24.02.2018 under section 124 of the Customs Act to the importer proposing penalty under section 112(a) of the Customs Act, 1962. The said notice was adjudicated and an Order-in-Original dated 16.04.2018 was passed imposing penalty of Rs.15,000/- on the petitioner Company. The respondent had issued a notice dated 02.05.2018 under Customs Broker Licence Regulations, 2013, calling upon the petitioner to show cause as to why the license issued to them should not be revoke for their failure to comply with the provision of Regulations 11(d) and 11(m) of the Customs Broker Licensing Regulations, 2013. An Inquiry Officer was appointed to enquire into the charges made against the petitioner. After enquiry, the Inquiry Officer filed a report on 02.08.2018. The Inquiry Officer found that the charge of non-compliance of Regulation 11(d) is sustainable and charge of Regulation 11(m) is not sustainable. The enquiry report was given to the petitioner and the personal hearing was accorded. Thereafter, the respondent passed the impugned order by holding that both the charges under Regulations 11(d) and 11(m) have been proved, without assigning any valid grounds/reasons and without putting the petitioner on notice on his disagreement with the enquiry report insofar as the charge made in relation to violation of Regulation 11(m) is concerned. Hence, the present writ petition.

3. Learned counsel for the petitioner submitted that when the Inquiry Officer has found that the charge leveled against the petitioner in relation to Regulation 11(m) is not sustainable, the respondent is not justified in holding that the petitioner is guilty of such charge also, without informing the petitioner about his disagreement on the enquiry report in respect of such charge and and without calling upon the petitioner to file his objection on such disagreement. In support of such contention, learned counsel relied on the Division Bench decision of the Delhi High Court reported in 2016 (334)LT 262 (Him Logistics Pvt.Ltd. vs. The Commissioner of Customs(General).

4. When this matter was taken up for admission on 04.12.2018, Mrs.Hema Muralikrishnan, learned Standing counsel took notice for the respondent and sought time to get instruction. Thereafter, the matter is listed today for further hearing.

5. Learned Standing counsel submitted that the respondent, on receipt of the enquiry report from the Inquiry Officer has forwarded the same to the petitioner through his communication dated 23.08.2018 calling upon them to represent against the findings of the Inquiry Officer. A perusal of the said communication dated 23.08.2018 would show that the respondent has simply forwarded the report of the Inquiry Officer to the petitioner without disclosing his disagreement on the findings of the Inquiry Officer with regard to the charge made against the petitioner in respect of Regulation 11(m). The communication dated 23.08.2018 reads as follows:

To

M/s. Leona Worldwide Logistics,
Old No.12, New No.25, 1st floor,
Angappa Naichen Street,
Chennai – 600 001.

Sub: Forwarding of inquiry Report i.r.o.SCN dated 02.05.2018 issued by Commissioner of Customs (Commissionerate VIII) Custom House, Chennai j-01 in r/o M/s. Leona Worldwide Logistics-Reg

....

A copy of the inquiry report received from the Inquiry Officer for the subject SCN is forwarded herewith.

If your are not satisfied with the Inquiry Report, you may represent to the commissioner of Customs, Chennai-VIII against the findings of the Inquiry Officer within 30 days from the receipt of this letter under Regulation 20 (7) of CBLR, 2013.

(R.RAJENDIRAN)
ASST.COMMISSIONER OF CUSTOMS
(CBS)

6. Perusal of the said communication would, thus, show that the respondent neither disclosed his mind or decision of disagreement with the findings of the Inquiry Officer with regard to the charge made in respect of Regulation 11(m) nor called upon the petitioner to file their objection with regard to such disagreement. Needless to say that when the charges are levelled and an enquiry is conducted based on such charges, the enquiry report filed by the Inquiry Officer is a crucial document and if the disciplinary/punishing authority intends to disagree with the whole or any of the findings rendered by the Inquiry Officer, in respect of the whole or any of the charges, he has to necessarily put the person, against whom such charges

are made, on notice, by specifically expressing his disagreement and call upon such person to give objection on such disagreement. Without disclosing the disagreement and without calling upon the person against whom the charges are levelled to show cause on such disagreement, if an order is passed by imposing punishment by disagreeing with the report of the Inquiry Officer, certainly, it should be construed as the one passed clearly in violation of principles of natural justice, as the petitioner was totally prevented from placing their objections on such disagreement, even though the Inquiry Officer has found that the petitioner is not guilty of such charge. At this juncture, it is useful to refer to the decision of the Delhi High Court reported in 2016(334) EL 262 (Him Logistics Pvt. Ltd., vs. The Commissioner of Customs(General) wherein paragraph Nos.19 and 20 reads as follows:

> 19. We answer question no.(ii) by holding that where the principal commissioner or commissioner of customs, as the case may be, intends to disagree with the inquiry report, that is in favour of the Customs Broker, then it is mandatory for him to communicate the adverse material/reasons for disagreement to the Custom Broker and require him to show cause/represent against the proposed adverse order.
>
> 20. In view of the above, the impugned order dated 01.09.2015 cannot be sustained. The same is accordingly quashed. However, the impugned order dated 01.09.2015 shall be treated as a communication of the reasons for disagreement entered by the Commissioner and the petitioner, if it so desires, may furnish its objections to the reasons for disagreement within a period of two weeks and show cause/represent against the proposed adverse order. The proceedings shall be finalized by the Commissioner of customs within a period of four weeks thereafter.

The above view taken by the Delhi High Court supports my conclusion.

7. Considering the above stated facts and circumstances, this Court is of the view that the petitioner should be given an opportunity to place their objections as against the disagreement of the respondent in respect of the charge levelled in relation to Regulation 11(m).

8. Accordingly, the writ petition is allowed. The punishments imposed in the impugned proceedings are set aside. Consequently, the petitioner as well as the respondent are directed to treat the impugned communication as reasons for disagreement entered by the Commissioner. Thus, the petitioner shall furnish their objections to the reasons for the disagreement within a period of two weeks from the date of receipt of a copy of this order. On receipt of such objections, the respondent shall pass fresh order on merits and in accordance with law within a period of four weeks thereafter. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

vsi

To

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

+1 cc to M/s.A.Mohamed Ismail, Advocate, SR No.85731

+1 cc to M/s.Hema Muralikrishnan, Advocate, SR No.86019

W.P.No.31800 of 2018

ssm(28/12/18)