



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.04.2018

CORAM:

WEB COPY

**THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU
AND
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI**

W.A.[MD].No.673 of 2018
and
C.M.P. (MD)No.3982 of 2018
in
W.P.[MD].No.5052 of 2018

The Commissioner of Customs,
Custom House, New Harbour Estate,
Tuticorin - 628 004.

.. Appellant/Respondent

Vs.

M/s.Hari & Co.,
Container Freight Station
No.4/29E, Madurai Bye-Pass Road,
Tuticorin - 628 008,
By its Executive Director and
Authorised Signatory
Mr.R.Arul Murugan

... Respondent / Petitioner

PRAYER: Appeal is filed under Clause 15 of the Letter Patent Act, to set aside the order of the learned single Judge of this Court, dated 09.03.2018 in WMP(MD)NO.5019/2018 in W.P.(MD)No.5052 of 2018.

Prayer in WMP(MD). 5019/ 2018 :

To pass an order of Interim stay of the order of immediate suspension of operation of the custodianship of the CFS held by the petitioner firm in terms of the provisions contained in Regulation 11(2) of the Handling of Cargo in Customes Area Regulations, 2009 in file C.No.VIII/48/4/2002-Cus/Pol, dated 05/03/2018 passed by the respondent and allow the petitioner company to operate their license as CFS pending disposal of the main writ petition.

Prayer in WP(MD). 5052/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to pass an order of Writ of Certiorarified Mandamus, to call for the records connected with the passing of the order of immediate suspension of operation of the custodianship of the CFS held by the petitioner firm in terms of the provisions contained in Regulation 11(2) of the Handling of Cargo in Customes Area Regulations, 2009 in file C.No.VIII/48/4/2002-Cus/Pol dated 05/03/2018 (vide public notice no.26/2004, dt 13/05/2004) by the respondent herein and to quash the same as having passed without



jurisdiction and contrary to law and consequently to permit the petitioner.

For Appellant : Mr.B.Vijay Karthikeyan
For Respondent : Mr.N.Prasad

JUDGEMENT

[Judgement of the Court was delivered by K.RAVICHANDRABAABU, J]

This writ appeal is directed against the interim order of stay granted by the writ Court while entertaining the writ petition. The appellant before us is the respondent in the writ petition. The respondent before us is the Writ petitioner and a Customs House Agent granted with a licence under Customs Act, 1962 r/w Provisions of Handling of Cargo in Customs Area Regulations, 2009. The said licence was suspended by the proceedings of the appellant herein on 05.03.2018 by invoking the power under Regulations 11(2) of Handling of Cargo in Customs Area Regulations, 2009, for the reasons stated in the said suspension order. The said order is under challenge before the writ Court.

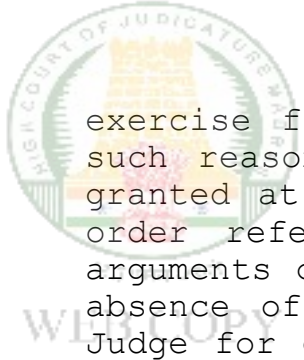
2.We are refraining ourselves from expressing any view on the merits of the reasons stated in the said order, in view of the admitted position that the writ Court has not passed the interim order on discussion of merits, after hearing both sides, as the order under challenge before us is only a single line order granting interim stay also by posting the matter for further hearing on another date viz., 02.04.2018.

3.The learned counsel appearing for the appellant vehemently contended before us that the learned Judge ought not to have granted such interim order, when the offence alleged against the writ petitioner in the impugned proceedings is very serious in nature and therefore, staying the impugned order of suspension, would amount to allowing the writ petition itself. Therefore, the learned counsel sought interference of this Court with the order passed by the learned single Judge.

4.On the other hand, the learned counsel appearing for the respondent before us, submitted that the learned Judge has chosen to grant the interim order only after referring to certain provisions under the Regulations and therefore, this Court need not interfere with such order and on the other hand, parties may be directed to go before the learned single Judge and agitate the matter. The learned counsel also raised an objection with regard to the maintainability of the writ appeal by contending that as against the interim order granted by the writ Court, normally writ appeal is not maintainable.

5.We heard both sides.

6.There is no dispute to the fact that the learned single Judge while granting the interim order of stay, has not stated any reason in support of the grant of such interim order, so as to warrant an



exercise from us to decide about the correctness or otherwise of such reasoning. The fact remains that the said interim order was granted at the time of admission of the writ petition. Though the order refers, as though the same was passed after hearing the arguments of the learned counsel for the respondent as well, in the absence of any specific reasons and finding given by the learned Judge for grant of interim stay, for all practical purposes, it is to be construed as an ex parte order, giving liberty to the respondent to seek for vacating the same by filing counter affidavit. Now, it is stated before us that the appellant has already moved Vacate Stay Petition in W.M.P.(MD)No.7017 of 2018 in W.P.(MD)No.5052 of 2018, before the learned single Judge and the same is pending.

7. When such being the factual position, it is for the appellant to canvass against the interim order before the learned single Judge while arguing the Vacate Stay Petition. Since serious allegations are made against the writ petitioner, in the impugned order, which was put to challenge in the writ petition and in view of the fact that the learned Judge has chosen to grant the interim stay of the suspension order, we are of the considered view that the Vacate Stay Petition filed by the appellant herein before the writ Court has to be taken up immediately, so that an order on merits shall be passed in the stay petition by the writ Court.

8. Accordingly, the Writ Appeal is disposed of with a request to the Writ Court to take up the Vacate Stay Petition as expeditiously as possible, at any event, before the commencement of the vacation and dispose of the same after hearing both sides on merits and in accordance with law. No costs. Consequently, connected Miscellaneous Petition is closed.

9. Registry is directed to post the matter before the Writ Court on 26.04.2018, on which date, the learned counsels appearing for both sides are directed to appear and place their submissions before the writ Court.

Sd/-

Assistant Registrar(C.O.)

/True Copy/

Sub Assistant Registrar

To

The Commissioner of Customs, Custom House, New Harbour Estate, Tuticorin - 628 004.

Copy to:

The Section Officer, Writ Section,
Madurai Bench of Madras High Court, Madurai.

+1CC to Mr.B.Vijay Karthikeyan, Advocate, SR.No. 63141

W.A.[MD].No.673 of 2018