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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 08.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
W.P. (MD).No.21372 of 2018

and

W.M.P. (MD)No.19232 of 2018

M/s.VVD Shipping Services Pvt.,Ltd.,
represented by its Director
Mr.D.Bremanandam

... Petitioner

Vs.

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

... Respondent

PRAYER: Petition filed under Article 226 of Constitution of India to call for the entire records of the respondent herein leading to the issuance of the impugned order dated 04.10.2018 issued in C.No.VIII/13/12/1984-CHAL by the respondent in ordering suspension of the petitioner's license and quash the same by issuance of a Writ of Certiorari or any other appropriate writ, order or direction, more specifically in the nature of a writ of certiorari.

For Petitioner	: Mr.A.K.Jayaraj
For Respondent	: Mr.R.Aravindan

ORDER

The petitioner is a holder of Customs Broker License. It was originally granted in the year 2003. It is valid up to 21.03.2028. Aggrieved by the order suspending its license, this writ petition has been filed.

2.The learned Standing Counsel appearing for the respondent raised three objections. His first submission is that the order of suspension is only an interim arrangement and that the writ petitioner can as well await final orders that may be passed under Rule 17 of Customs Brokers Licensing Regulations, 2018. He would submit that the impugned order has been passed after the authority was subjectively satisfied about the need for passing the same. He also contended that the writ petitioner herein has an



effective alternative remedy of appeal available under Rule 19 of the Regulation. Therefore, he pleaded for dismissal of the writ petition.

3.The learned counsel appearing for the writ petitioner pointed out the issue raised in this writ petition is no longer res integra. A learned Judge of this Court in the decision reported in 1995 (77) E.L.T. 79 (Mad.) in the case of *East West Freight Carriers (P) Ltd., Vs. Collector of Customs, Madras* held as follows:

"8. In my opinion the power to suspend the licence is to be exercised where immediate action is necessary"

4.The Hon'ble Division Bench of the Bombay High Court in the decision reported in 2008 (221) E.L.T. 488(Bom.) in the case of *Commissioner of Customs (General) Vs. S.A.Dalal & Co.*, also construed the earlier Regulation 20(2) which is in pari materia to Regulation 16, on the same lines.

5.I am in full agreement with the aforesaid submission. The shipping bill in the present case was filed on 09.11.2017. It was examined on 22.11.2017. It was subjected to the second examination on 05.12.2017. The statement of the parties was taken on 12.12.2017. Show cause notice was issued to parties concerned on 23.05.2018, under Section 124 of the Customs Act, 1962. Thereafter, the impugned order has been passed on 04.10.2018. Regulation 16 of the Custom Broker License Regulation, 2018 states that *the Principal Commissioner or Commissioner of customs, in appropriate cases where immediate action is necessary, suspend the license of a Customs Broker where an enquiry against him is pending or contemplated.*

6.As the sequence of events would indicate the cause of action arose as early as on 09.11.2017. Therefore, this obviously cannot be a case where immediate action was necessary. This Court had a look at the impugned order. The allegations against the writ petitioner is that due diligence was not taken by the petitioner. It is specifically submitted by the learned counsel for the petitioner that the petitioner has otherwise had a clean track record.

7.In this view of the matter, respectfully following the earlier decision of the Madras High Court and the decision of the Hon'ble Division Bench of the Bombay High Court, this Court sets aside the order impugned in this writ petition.

8.Ofcourse, allowing the writ petition will not come in the way of the respondent from initiating action against the writ petitioner under Regulation 17, if they are so advised.

9.With these observations and liberty to the respondent, this



writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/
Assistant Registrar(AS)

/True copy/

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Sub Assistant Registrar(CS-I)

To

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

+1cc to Mr.A.K.Jayaraj, Advocate, SR.No.94661

W.P. (MD) .No.21372 of 2018
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PNN

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