

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : 26.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ**W.P. (MD) NO.15587 OF 2016****AND****WMP (MD) NO.11450 OF 2016**

WEB COPY

M/s.T.Shanmugasundaram
114/4, 2nd Floor, Bryant Nagar,
Amman Koil Street, Chidambaranagar,
Main Road (Bell Supermarket Upstairs)
Tuticorin - 628 002.
Rep. by its Proprietor
T.Shanmugasundaram

... Petitioner

Vs.

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

... Respondent

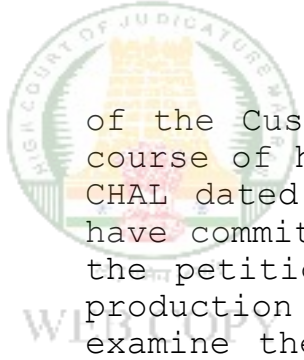
PRAYER: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for the records of the respondent in and connected with order in original No.09/2016 dated 27.07.2016 ordering revocation of CHA licence No.TTN/1/2013 (PAN AGNPS1797F) and forfeiting the security deposit of Rs.75,000/- in terms of Regulation 18 of Customs Broker's Licensing Regulations, 2013 and quash the same as it is without jurisdiction, contrary to law and mandate of the Customs Broker's Licensing Regulations, 2013.

For Petitioner : Mr.B.Sathish Sundar

For Respondent : Mr.Gurumoorthy

O R D E R

The petitioner is a Customs Broker, having a Customs Broker Licence No.TTN/1/2013, issued by the Commissioner of Customs House, Tuticorin. Works of the Customs Broker are regulated by the Customs Broker's Licensing Regulation, 2013 and the said licence is valid upto 25.03.2013. Apart from Tuticorin, the petitioner is operating at Chennai also, as per intimation under Form C under Regulation 9(2)



of the Customs House Agents Licensing Regulation, 2004. During the course of his business, a show cause notice in C.No.VIII/13/33/2012-CHAL dated 17.02.2016 was issued for certain illegality alleged to have committed by the petitioner in collusion with exporters. Though the petitioner caused a reply to the show cause notice requesting production of certain documents relied on by them and to cross examine the persons who had given statements during investigation, without considering the same, the Enquiry Officer, submitted a report holding the charges proved against the petitioner. Against the report, the petitioner had submitted his objections on 15.06.2016 highlighting among other grounds that (1) the show cause notice is barred by limitation in terms of Regulation 20(1) of Customs Broker's Licensing Regulation 2013; (2) violative of principles of natural justice as the documents sought for were not provided and opportunity of cross examination of persons was denied; and (3) without awaiting for the orders of Madurai Bench of Madras High Court in respect of the earlier show cause notice. Pursuant to the objections, the respondent afforded opportunity of personal hearing and passed the impugned order dated 27.07.2016 invoking the CHA Licence and forfeited the security deposit. As there is no quorum in the Tribunal to entertain appeal, the petitioner has approached this Court under Article 226 of the Constitution of India.

2. The learned counsel for the petitioner submitted that the respondent has issued a show-cause notice for yet another offence alleged to have been committed by the petitioner at Mumbai. Pursuant to the show-cause notice, the respondent has conducted an enquiry and it culminated in order-in-original No.05/2016 dated 28.04.2016 revoking the Customs House Licence granted to the petitioner in forfeiting the security deposit of Rs.75,000/- which is the subject matter of W.P.(MD)No.9434 of 2016. The revocation of the very same licence was issued by the respondent in Order-in-original No.09/2016 dated 27.07.2016. Para Nos.10, 11 and 12 of the order reads as under:

"(x) The contention of the Customs Broker that the Show Cause Notice issued is hit by limitation in terms of CBLR, 2013 is not maintainable, in as much as the SCN dated 14.02.2016 has been issued immediately on receipt of letter / report dated 08.12.2015 from the Office of the Principal Commissioner of Customs, Jawaharlal Nehru Custom House, Nawasheva. Thus, the provisions of regulation 20(1) of CBLR 2013 has been complied with and thereby the SCN issue is proper. I hold that the enquiry Officer's report dated 29.04.2016 is sustainable to the fact that the enquiry has been conducted by following the principles of natural justice and based on the submissions made by the Customs Broker.

(xi) Therefore, in the instant case, I hold that



the Customs Broker has violated the provisions contemplated under CBLR 2013 as stated supra, and thereby I find that the CB license is liable for revocation and forfeiture of security deposit and imposition of penalty. I have also noticed that the Customs Broker has filed Writ Petition No.9434/2016 before the Hon'ble High Court of Chennai at Madurai Bench against the Order-in-Original No.05/2016 dated 28.04.2016 passed by the Commissioner of Customs, Tuticorin, in an earlier offence committed by the CB under CBLR, 2013, wherein the Customs Brokers licence has already been revoked and the security deposit has also been appropriated. I also find that no orders has been passed in this regard by the Hon'ble High Court on the Writ Petition No.9434/2016 filed by the CB.

(xii) In this circumstance, in order to comply with the provisions contemplated under regulation 20 of CBLR 2013, I conclude that as the Customs Broker License has already been revoked and the security deposit has also been forfeited in an earlier case as discussed above, I apply the same ratio to the instant case as well. Further, I also observe that the Order-in-Original dated 28.04.2016 as discussed above, has been passed consequent on the issuance of SCN dated 11.11.2015 which has been issued prior to the instant Show Cause Notice dated 17.02.2016, for which, the present order is required to be passed in terms of CBLR 2013. As the revocation of licence and forfeiture of security deposit had already been enforced in the earlier Order-in-Original dated 28.04.2016 discussed supra, I incline to follow the same in the instant case and also impose penalty under regulation 22 of CBLR 2013."

3. The authority passed the above impugned order conscious of developments, which had taken place in the previous proceedings and very much aware that the said licence which is now revoked has already been revoked and the security deposit also was forfeited. In other words, by the impugned order is passed in a proceedings which stood abated in view of the previous order and against a non-existent document. The authority has mechanically passed the order with a view to complete the formality. Such an order, which is setting aside the non-existing licence is meaningless and farce in law. In such circumstances, the Order-in-original in No.09/2016 dated 27.07.2016 is also not legally sustainable in the eye of law. Accordingly, the impugned order is set aside. However, it is made clear that the offenders shall not go scot-free taking shelter under technicalities. Therefore, liberty is granted to the respondent to take appropriate action at appropriate time, in accordance with law.

4. With this observation, this writ petition is disposed



of. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (WRITS)

// True Copy //

Sub Assistant Registrar (CS II)

To

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

+1CC to Mr.M.RAMASAMY , Advocate SR.No. 75278.

+1CC to Mr.S.GURUMOORTHY , Advocate SR.No.75280.

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