BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 26.07.2018
CORAM:
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ
Writ Petition (MD) No.2043 of 2016
and
W.M.P.(MD).Nos.1763 and 1764 of 2016

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,
New Harbour Estate, Tuticorin-628 004. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari , calling for the records of the respondent in and connected show cause notice in C.No.VIII/13/33/2012-CHAL, dated 11.11.2015, seeking to revoke the Customs Broker License, forfeit the security deposit and impose penalty under the Provisions of the Custom Broker Licensing Regulations, 2013 and quash the same, as it is without jurisdiction, contrary to law and mandate of the Customs Brokers Licensing Regulations, 2013.

For Petitioner : Mr.B.Sathish Sundar
For Respondent : Mr.Gurumoorthy

ORDER

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 Licence 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 dated 02.12.2014 was issued for certain illegality alleged to have committed by the petitioner and the importer. Ultimately, the proceedings were taken and the order in Original No.38212/2015, dated 29.05.2015 came to be passed, in which the petitioner was penalized with a sum of Rs.2,00,000/-. Against which, the petitioner preferred an appeal to the Customs Excise Service Tax Appellate Tribunal, Chennai. Pursuant to the order passed by the Original Authority, dated 29.05.2015, the Commissioner of Customs, Chennai passed an order of prohibition, dated 31.08.2015. The petitioner has challenged the above said prohibition order passed by the Commissioner of Customs, Chennai, by way of W.P.No.28295 of 2015, in which, an interim order was granted.

2. Thereafter, another show-cause notice in C.No.VIII/13/33/2012-CHAL, dated 11.11.2015 was issued to the petitioner under Regulation 20(1) of Customs Brokers Licensing Regulation, 2013 for revocation of licence, to forfeit the security deposit and for imposition of penalty in terms of Customs Brokers Licensing Regulations, 2013. Challenging the show-cause notice issued for revocation of licence and forfeiture of security deposit, the petitioner preferred the present writ petition in W.P.(MD). No.2043 of 2016.

3.While the matter is pending, an enquiry Officer was appointed for revocation of licence granted in favour of the petitioner for offence committed by him in respect of seizure of 5.560 MT of Red Sanders logs from the assignment made by M/s.ASP Senna Traders and for contravention of Regulations 10, 11(a), 11(d), 11(n) and 15(2) of Customs Brokers Licence Regulations, 2013. The Enquiry Officer has fixed the date of personal hearing on 25.01.2016. The petitioner sought for adjournment of the personal hearing through his letter, dated 25.01.2016, sent by registered post on 26.01.2016. However, the Enquiry Officer conducted the enquiry proceedings and submitted an Enquiry Report on 25.01.2016. On the basis of the enquiry report, the Customs Brokers Licence, issued to the petitioner was revoked and security deposit at Rs.75,000/- was forfeited in the proceedings of the respondent in order-in-Original C.No.VIII/13/22/2012-CHAL Vol.II, dated 28.04.2016. Against which, the petitioner preferred another writ petition in W.P.(MD).No.9434 of 2016.

4.The learned counsel for the petitioner would vehemently contend that the show-cause notice issued for revocation of licence is barred by limitation under the Customs Brokers Licensing Regulations, 2013.

5.Regulation 20(1) of the Customs Brokers Licensing Regulations, 2013 is extracted hereunder:

> *"20(1).The Commissioner of Customs shall issue a notice in writing to the Customs Broker within a period of 90 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 third 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".*

As per said sub-section (1) of Regulation 20, the Commissioner of Customs shall issue a notice in writing to the Custom Brokers within a period of 90 days from the date of receipt of offence report.

6.According to the petitioner, show-cause notice was not issued within a period of 90 days from the date of alleged offence committed by the petitioner. According to the petitioner, the respondent relied on various documents for issuing the show-cause notice. It should be taken as the date of offending action taken by the respondent. In the show-cause dated 11.11.2015, as many as 10 documents were relied on. The first document is a voluntary statement given by one Vijayakumar Chavda, partner of M/s.ASP Senna Traders, Kutch, Gujarat, dated 28.05.2014. The seventh document relied on is the statement given by the petitioner himself on 05.06.2014. As per the circular No.9/2010/CUS, dated 08.04.2010, the Central Board of Excise and Customs, New Delhi, Ministry of Finance (Department of Revenue), Government of India, issued clarifications on procedures and issuance of licence. Clause 7.2 of the circular reads as under:

> *"7.2. In cases where immediate suspension action against a CHA is required to be taken by a Commissioner of Customs under regulation 20(2), there is no need for following the procedure prescribed under Regulation 22 since such an action is taken immediately and only in justified cases depending upon the seriousness or gravity of offence. However, it has been decided by the Board that a 'post-decisional hearing' should be given in all such cases so that errors apparent, if any, can be corrected and an opportunity for personal hearing is given to the aggrieved party. Further, Board has also prescribed certain time limits in cases warranting immediate suspension under Regulation 20(2). Accordingly, the investigating authority shall furnish its report to the Commissioner of Customs who had issued the CHA license (Licensing authority), within thirty days of the detection of an offence. The Licensing authority shall take necessary immediate suspension action within fifteen days of the receipt of the report of the investigating authority. A post-decisional hearing shall be granted to the party within fifteen days from the date of his suspension. The Commissioner of Customs concerned shall issue an Adjudication Order, where it is possible to do so, within fifteen days from the date of personal hearing so granted by him."*

7.In cases, where immediate suspension action against the Customs House Agent is required to be taken under Regulation 20(2), it shall be done within 30 days of the detection of an offence. The Licencing Authority shall take necessary immediate action within 30 days of the receipt of the report of the Investigating Authority. So, any action should be taken, as per Regulation 20(2) within 30 days from the date of detection of offence. As per Regulation 20(1) extracted above, the Commissioner of Customs shall issue a notice in writing within 90 days from the date of offence committed. From the date mentioned above, it can be inferred that offence report must have been received as early as 2014, on the basis of the statements recorded by the respondents in this regard.

8.This Court in **2014 (309) ELT 422 (Madras)** in the case of **AM Ahamed & CO. Vs. Commissioner of Customs (Imports), Chennai** has dealt with the meaning of offence report. Paragraph Nos.17, 18 and 20 of the said decision will discuss as to what constitutes an offence report and the same reads as follows:

> "17.Unfortunately, the Regulations do not define what an offence report is and the Regulations do not even state as to how an **offence report** is to be sent. The Regulations do not even use the expression "**offence report**" anywhere else other than Regulation 22(1). Even the grounds on which a licence can be revoked or suspended, mentioned in Regulation 20(1), do not include the definition of the expression offence or **offence report**. There are only three grounds on which a licence can be suspended or revoked under sub-regulation (1) of Regulation 20. Regulation 20(1) reads as follows:
>
> > "20.**Suspension or revocation of licence:** (1) The Commissioner of Customs, may subject to the provisions of regulation 22, revoke the licence of a Customs House Agent and order for forfeiture of part or whole of security, or only order forfeiture of part or whole of security, on any of the following grounds namely:-
> >
> > (a) failure of the Customs House Agent to comply with any of the conditions of the bond executed by him under regulation 10;
> >
> > (b) failure of the Customs House Agent to comply with any of the provisions of these regulations, within the jurisdiction of the said Commissioner of Customs or anywhere else;
> >
> > (c) any misconduct on his part, whether within the jurisdiction of the said Commissioner of Customs or anywhere else which in the opinion of the Commissioner renders him unfit to transact any business in the Customs Station.
>
> 18.The above regulation has only 3 ingredients namely (i) failure to comply with the bond conditions, (ii) failure to comply with the regulations and (iii) a misconduct, for any of which, the licence can be revoked. Since the above regulation does not use the expression "**offence report**", we have to presume that a report indicating the availability of any one of the above 3 ingredients should be construed as an **offence report**. Consequently, the date of knowledge gained

by the Commissioner, by means of any communication, be it show cause notice or order-in-original, has to be construed as the date of receipt of the **offence report**. Otherwise, a report about anyone of the above 3 ingredients can be sent at any time, even after five years or ten years.

....

20.The time limit prescribed in Regulation 22(1) has to be understood in the context of the strict time schedule prescribed in various portions of the Regulations. Regulation 20(2), for instance, entitles the Commissioner, to suspend the licence of an agent, in appropriate cases, where immediate action is necessary. Regulation 22(3) prescribes a time limit of 15 days. Regulation 22(1) prescribes a time limit within which action is to be initiated. It also prescribes the time limit under Regulation 22(5). Therefore, considering the fact that the whole proceedings are to be commenced within a time limit and also concluded within a time frame, I am of the view that the show cause notice issued to the petitioner on 8.5.2010 with a copy marked to the first respondent should be taken as the date of receipt of the **offence report.** Consequently, the period of 90 days should commence only from that date. If so calculated, the impugned proceedings have obviously been initiated beyond the period of 90 days."

9.As per the regulation, the detection of the offence must have led to recording of statements from concerned individuals. In view of that matter, this statement recorded in respect of an importer namely M/s.ASP Senna Traders, Kutch, Gujarat must be after detecting the offence and the statement recorded from the petitioner himself was on 05.06.2014. Therefore, it is very clear that some offence was detected against the petitioner as early as on 28.05.2014 much less on 05.06.2014, when a statement was recorded. As per 20(1) of the Regulation, 2013, the Commissioner shall issue a show-cause notice within 90 days from the date of offence report. Since there is no offence report mentioned in the representation, it is construed that the date of offence shall be prior to 28.05.2013 and it came to the knowledge of the Commissioner before recording the statement. If that is taken as date of offence and same offence report is sent to the Commissioner, the Commissioner should have issued a show-cause notice for revoking the licence on or before 05.09.2014, much less before 25.02.2015, whereas the show-cause notice came to be issued only on 11.11.2015. The contention, therefore, made by the petitioner that the show-cause notice dated 11.11.2015 is barred by limitation, has some force. As cited supra, this Court in the case of **AM Ahamed & CO. Vs. Commissioner of Customs (Imports), Chennai** (referred supra) has observed in the Head note as under:

> "**Customs Broker Licence:-** Revocation of, along with forfeiture of security deposit - Basis thereof being misdeclaration of county of origin and undervaluation of goods - Challenge to, on ground that importer having settled the matter, should not be penalized - Ground accepted as revocation of licence would throw the broker out of business once and for all, depriving him of his very livelihood - Thus, once the importer has escaped on having made a true and full disclosure before the Settlement Commission, it would be unfair to impose such extreme penalty on broker - Such order, thus, set aside - Regulation 20(7) of the Customs Brokers Licensing Regulations, 2013 - Regulations 9(1) , 13(b), 13(d), 13 (e), 20 and 22 of Customs House Agents Licensing Regulations, 2004 - Sections 112(a) and 114AA of Customs Act, 1962 - Article 226 of Constitution of India."

and the same view is taken in **2015 (322) E.L.T. 170 (Madras)** in the case of ***Sanco Trans Limited Vs Commissioner of Customs, Sea Port/Imports, Chennai*** and in yet another judgment in **W.A.No.1319/15, dated 05.11.2015**, reported in ***2016 (334) ELT 274 Madras***.

10.From the above judgments, it is very clear that the Regulation 20 is mandatory in nature and if any failure in not issuing show-cause notice within 90 days, would vitiate the entire proceedings. Therefore, the show-cause notice dated 11.11.2015 issued by the respondent is liable to be set aside.

11.In the result, the show-cause notice, dated 11.11.2015, issued by the respondent is set aside. Accordingly, this writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

sd/
Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

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

+1.CC. To MR.M.RAMASAMY, Advocate in SR No.75277

W.P(MD)No.2043 of 2016
26.07.2018
(½)

vs
MK (20.03.2019) 6P 3C