BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

Writ Petition (MD) No.9434 of 2016
and
W.M.P.(MD).No.7487 of 2016

M/s.T.Shanmugasundaram
14/4A, 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,
Tuticorin Commissionerate,
Cumstom House,
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 connected with order in original No.C.No.VIII/13/22/2012-CHAL, (Vol.II) dated 28.04.2016 ordering revocation of CHA licence No.TTN/1/2013 (PAN AGNPS1796F) and, forfeiting the security deposit of Rs.75,000/- in terms of Regulation 18 of Customs Broker's Licencing 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 25.03.2023. 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 ..01.2014 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 in C.No.VIII/13/22/2012-CHAL, (Vol.II) dated 28.04.2016 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 a 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 fixed the 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 the present writ petition in W.P.(MD). No.9434 of 2016.

4.The learned counsel for the petitioner would contend that one Piyush Bhardwaj was appointed as Enquiry Officer in this case. The said Officer was issued with the transfer order on 12.01.2016 vide Office Order No.03/2016, dated 12.01.2016 to Mumbai and a direction was also issued to relieve the Officer immediately. However, the said Enquiry Officer, who was under transfer fixed the date of hearing on 25.01.2016 and communicated the same to the petitioner by a letter dated 18.01.2016. On receipt of the notice, the petitioner made a representation on 25.01.2016 requesting the Enquiry Officer to postpone the hearing. However, it is noted that the said letter was posted only on 26.01.2016. The Enquiry Officer had considered the materials available before him and filed an Enquiry report dated 25.01.2016 to the Commissioner of Customs, Tuticorin and a copy of which was also sent to the petitioner herein. Ultimately, an order-in-original in C.No.VIII/13/22/2012-

CHAL, (Vol.II) dated 28.04.2016 was passed, which revoked the licence and forfeited the security deposit.

5.From the dates and events, it is seen that the petitioner through his counsel has sought for adjournment of personal hearing scheduled to be held on 25.01.2016. But the Enquiry Officer had continued with the enquiry in the absence of the petitioner. He submitted his enquiry report on the very same date of personal hearing. The letter sent by the counsel seeking adjournment got returned with an endorsement "LEFT". Hence, the averment that the Enquiry Officer was under transfer and relieved on 12.01.2016 is not without substance. Once the incumbent is transferred, he shall pass orders which amounts to lack of jurisdiction. The sequence reveals that everything was pre-determined and an empty formality has been given to the petitioner. Therefore, the manner in which the enquiry report came to be submitted on the very same date of hearing arises a doubt and consequential order based on the said report shows the biased approach of the respondent.

6. As per Section 122(a) of the Customs Brokers Licensing Regulations, 2013 and the circular issued by the Government of India, Ministry of Finance (Department of Revenue, Central Board of Excise & Customs, New Delhi fairly specifies that at least three adjournments shall be given to the petitioner, which means that opportunity of hearing is mandatory.

7. But in the instant case, the enquiry notice was posted only on 18.01.2016, fixing the date of hearing on 25.01.2016. Within a short span of 7 days including the time consumed for delivery of the letter, the hearing date was fixed. It is not in conformity with principles of natural justice providing fair and reasonable opportunity. Further, when a person does not appear, it is incumbent on the Enquiry Officer as per Section 122(a) of the of the Customs Brokers Licensing Regulations, 2013 and standing instructions to provide him one more opportunity of hearing, that too when the communication sent by the Enquiry Officer at the neck of moment giving a very short span of time to respond. In the instant case, the Enquiry Officer submitted his enquiry report on the very same date of hearing reveals that he was in a hurry to complete the formality in view of his transfer. The action of the Enquiry Officer is in violation of principles of natural justice and the order based on the enquiry report is also considered to be a violation of principles of natural justice.

8. In view of setting aside the basic document namely show-cause notice, the subsequent order and the order passed in original are automatically stood vitiated.

9. In the result, the order in original No.C.No.VIII/13/22/2012-CHAL, (Vol.II) dated 28.04.2016 issued by the respondent is set aside. Accordingly, this writ petition is

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

sd/
Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

The Commissioner of Customs,
Tuticorin Commissionerate,
Cumstom House,
Tuticorin - 628 004

+1.CC. To Mr.M.Ramasamy, Advocate in SR No.75276
+1.CC. To Mr.S.Gurumoorthy, Advocate in SR No.75279

W.P(MD)No.9434 of 2016
26.07.2018
(2/2)

vs/tk
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