BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.10.2018

CORAM :

**THE HONOURABLE MRS.JUSTICE J.NISHA BANU**

W.P(MD)No.1064 of 2013
and
M.P(MD)Nos.1 and 2 of 2013

M/s.Gemini Sea Air Freight Services,
Rep. by its Partner Mr.R.Srinivasan,
No.46, Pereira Street,
Tuticorin-628 001. ... Petitioner

**vs.**

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

Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the entire records of the respondent leading to the passing of impugned Show Cause Notice vide C.No.VIII/13/39/2003-CHAL, dated 18.12.2012 and quash the same.

For Petitioner : Mr.A.K.Jayaraj
For Respondent : Mr.S.Guru Murthy

**ORDER**

The present writ petition has been filed for issuance of a Writ of Certiorari, to call for the records of the respondent leading to the passing of impugned Show Cause Notice vide C.No.VIII/13/39/2003-CHAL, dated 18.12.2012 and quash the same.

2.Learned counsel for the petitioner would aver among other things that the petitioner is a Custom House Agent Licensee issued with regular licence in Form-D by Tuticorin Commissionerate which is valid upto 03.02.2019. The petitioner applied and permitted to transact Customs Clearance work in the jurisdiction of Chennai Customs Station vide CHA Licence No.TUT/04/2004 with PAN AAEFG2457K under Regulation 9(2) of CHALR 2004. While so, based on the investigation report received from CBI, the respondent had alleged a case against the petitioner on the ground that during the period 13.12.2005 to 04.04.2006, 42 shipping bills and 17 shipping bills were filed by the petitioner on behalf of M/s.Ajay Exports and

M/s.Sunitha Metal Corporation, Chennai, declaring the goods as ''stainless steel utensils''. It was further alleged that a partner of the petitioner's firm had signed the blank shipping bills and Annexures for monetary benefit and allowed one Shri.T.R.Boopalan to handle the exports. The respondent alleged that these two companies with a fraudulent intention of claiming undue duty drawback, had made the export with lesser quantity of utensils but declaring the weight nearly five to eight times more than the actual weight. The respondent further alleged that the shipping bills were processed by Shri.T.R.Boopalan who had assisted Shri.Manish Kumar Jain, Proprietor of M/s.Parmar Exports, by arranging for the services of CHA. It was alleged that Shri.Boopalan had managed to get signatures from Shri.Srinivasan of the petitioner firm and Shri.M.Mahinder Reddy, the agent of M/s.SP Cargo Agency Private Limited, for filing the shipping bills for the export companies. Based on the above, it was alleged that the petitioner had violated Regulations of CHALR, 2004, by having signed the blank documents and handing over the same to unauthorised person, by not verifying the antecedents of the exporters, by not obtaining documents from the exporter directly, by not obtaining authorization from the company and by not advising client to comply with the provisions of the Act. On these allegations, the petitioner were charged with violation of Regulation 13(a), 13(b), 13(f) and 13(o) of CHALR, 2004.

3.Learned counsel for the petitioner would further submit that the Commissioner of Customs, Chennai, based on the investigation report from the investigation agency with respect to exports made by M/s.Ajay Exports and M/s.Sunitha Metal Corporation, prohibited the petitioner from working/performing the customs related activities at the Ports of Chennai Customs Zones. According to the petitioner, the alleged shipping bills were filed during the period 13.12.2005 to 04.04.2006 by M/s.Ajay Exports and during 23.01.2006 to 05.04.2006 by M/s.Sunitha Metal Corporation, Chennai. The shipping bills were filed during the year December 2005 to April 2006 by the above exporters and due to prohibition order of Chennai Customs, the Commissioner of Customs, Tuticorin, respondent herein, without issuing any show cause notice as envisaged under Regulation 22 of the CHALR 2004 nor granting an opportunity of personal hearing, had passed an order on 04.03.2011 suspending the operation of CHA licence of the petitioner in terms of Regulation 20(2) of CHALR 2004 with immediate effect. Challenging the same, the petitioner had filed W.P(MD)No.13469 of 2012, and respondent therein filed counter confirming that the impugned export took place during the period from 13.12.2005 to 04.04.2006 and the CBI had investigated the case and submitted report during August 2010 and the respondent also accepted that after the post decisional hearing, no order was passed. Therefore, this Court by order dated 15.11.2012, allowed the said writ petition by setting aside the order suspending the CHA licence. Thereafter, a show cause notice dated 18.12.2012 was issued by the respondent why action should not be taken under Regulation 20(1) of CHALR, 2004, for revoking CHA licence issued by Tuticorin Customs Commissionerate and why security deposit should not be forfeited under Regulation 20(1) of CHALR 2004, when the investigation report from CBI was submitted to the Customs in August 2010 itself, against which, the present writ petition has been filed.



4.Learned counsel for the petitioner would draw the attention of this Court that based on the investigation report received from CBI, Chennia, only action has been taken. It is accepted by the Assistant Commissioner of Customs, Tuticorin, in the reply affidavit filed in W.P.No.13469/2012 that CBI investigated the case and sent report during 2010 itself and based on that report only, further action has been taken and prohibition order had been passed on 30.09.2010 and then suspension order on 04.03.2011 which was set aside in the said writ petition. Therefore, it is clear that the impugned show cause notice dated 18.12.2012 is based on the report issued in August 2010 by the CBI which gives the dispute of alleged offence of the petitioner and the same was accepted by the Assistant Commissioner of Customs, Tuticorin, before this Court. This being so, any show cause notice under Regulation 20(1) of CHALR should have been issued before 30$^{th}$ of November 2010. In this context, decision of the Hon'ble Supreme Court in ***Babu Verghese vs. Bar Council of Kerala (AIR 1999 SC 1281)*** is relied upon, wherein, it has been held that where a power is given to do a certain thing in a certain way, the thing must be done in that way and not otherwise. Therefore, it is contended that the respondent has jurisdiction only for 90 days from the date of offence report to issue a show cause notice to revoke CHA licence under Regulation 20(1) of CHALR 2004 and hence, the impugned show cause notice is liable to be set aside.

5.Learned counsel for the respondent would state that the petitioner had got alternative appellate remedy against the order under Regulation 22(7) of the CHALR 2004 consequent to the proceedings initiated under Regulation 22(1), by way of an appeal before the CESTAT under Regulation 22(8) and therefore prayed that the present writ petition is not maintainable.

6.Heard the learned counsel for the parties and perused the materials available on record.

7.Though normally, the writ court would not interfere with the issuance of show cause notice, as per the judgment of the Apex Court in ***UOI vs. Vicco Laboratories (2007 (218) ELT 647 (SC)),*** where a show cause notice is issued either without jurisdiction or in abuse of process of law, the writ court can interfere with the same.

8.In the present case, perusal of Customs House Agents Licencing Regulations 2004 discloses that Regulation 20(1) of the CHALR 2004 provides for revocation of CHA licence granted to a CHA company after following the procedure prescribed under Regulation 22. Regulation 20(2) r/w 20(3) provides for immediate suspension of licence without following the procedures prescribed under Regulation 22. The proceeding under Regulation 20(1) and Regulation 20(2) are independent of one another by virtue of the non-obstante clause in Regulation 20(2). According to the petitioner, when any action is proposed under Regulation 20(1), then procedures prescribed under clauses (1) to (8) of Regulation 22 has to be necessarily followed and as per Regulation 22(1), the Commissioner of Customs shall issue a notice in writing to the Custom House Agent within 90 days from the date of receipt of offence report.

9.Before going to decide the issue involved in this writ petition, it is relevant to extract below Regulation 22 of CHALR 2004:-

> ''Procedure for suspending or revoking licence under Regulation 20.---(1) The Commissioner of Customs shall issue a notice in writing to the Customs House Agent within ninety days from the date of receipt of offence report, stating the grounds on which it is proposed to suspend or revoke the licence and requiring the said Customs House Agent to submit within thirty 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 House Agent desires to be heard in person by the said Deputy Commissioner of Customs or Assistant Commissioner of Customs.''

10.Whether the limitation prescribed i.e., 90 days period, under Regulation 22(1) of CHALR 2004, is mandatory or not is the only issue to be decided in this case and the above issue is no more *res integra* in view of the judgment of the Division Bench of this Court in ***Santon Shipping Services, Tuticorin, vs. Commissioner of Cusoms, Tuticorin and another (CMA.No.730 of 2016, dated 13.10.2017)***. For better appreciation, the relevant paragraphs of the said judgments are reproduced hereunder:-

> ''41.In view of the aforesaid judgments, in our opinion, the issue as to whether the limitation prescribed i.e., 90 days period, under Regulation 22(1) of CHALR 2004, is mandatory or not, is no more res integra.
>
> 42.Once the limitation prescribed is mandatory, as has been declared by the courts of law, it cannot be stated that, because of the other issues, that is the merit of the case, this mandatory requirement of limitation can be ignored.
>
> 43.It is not the case of the 1st respondent that the 90 days limitation period under Regulation 22(1), is directory. It is also not the case of the 1st respondent that the show cause notice was issued within the limitation period of 90 days from the date of offence report.
>
> 44.Since the offence report was dated 22.09.2010 and the show cause notice, admittedly, was issued only on 18.11.2011, there can be no doubt that the said show cause notice was issued well beyond the period of limitation of 90 days.
>
> 45.Whatever be the claim and counter claim on the merits, in this appeal can, in our view, they get shadowed by the failure on the part of the Revenue in not acting in time

by issuing the show cause notice, within the period as contemplated under Regulation 22(1) of the CHALR 2004.

46.Therefore, we are of the considered view, and in fact have no hesitation to hold so that, the Revenue has not issued the show cause notice dated 18.11.2011 within the period of limitation prescribed under Regulation 22(1) CHALR, 2004 and thus, the consequent proceedings involving revocation of the appellant's CHA licence and forfeiture of its security deposit, is unlawful.

46.Since these aspects, have not been considered and answered by the CESTAT in the order impugned, in spite of the specific ground having been raised by the appellants, we are constrained to set aside the impugned order.''

11.In the present case also, the offence report was dated August 2010 and admittedly, the impugned show cause notice was issued only 18.12.2012 and therefore, there can be no doubt that the said show cause notice was issued well beyond the period of limitation of 90 days as per Regulation 22(1) of CHALR 2004 and therefore, the writ petition is maintainable. Since the show cause notice has been issued beyond the period of limitation, the above judgment in ***CMA.No.730 of 2016, dated 13.10.2017*** is squarely applicable to the present case and in the light of the said judgment, the impugned Show Cause Notice in C.No.VIII/13/39/2003-CHAL, dated 18.12.2012 is set aside and this Writ Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar (CS-I)

**To**

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

+ 1 CC TO Mr.A.K.JAYARAJ, ADVOCATE IN SR No. 91621

BALA
TE/SV/SAR-1 : 11/12/2018 : 5P/3C

W.P(MD)No.1064 of 2013
22.10.2018