



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.10.2018
(Reserved on 29.08.2018)

WEB COPY

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.496 of 2013
and
M.P(MD)No.1 of 2013

M/s.A.M.Ahamed & Co
Represented by its General Manager,
Mr.M.Ahmed Ashraf,
No.15 Pereira Street,
Tuticorin-628 001.

... Petitioner

vs.

1)The Commissioner of Customs,
Custom House,
Tutuicorin-628 004.
2)The Asst. Commissioner of Customs (CHA)
Custom House,
Tutuicorin-628 004.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order dated 01.01.2013 passed in C.No. VIII/13/18/2011-CHAL by the 2nd respondent and quash the same and further forbear the 1st respondent from proceeding against the petitioner under Regulation 21 of CHALR, 2004 in respect of the proceedings initiated in C.No.VIII/13/18/2011-CHAL.

For Petitioner	: Mr.Hari Radhakrishnan
For Respondents	: Mr.R.Nandakumar

ORDER

This writ petition has been filed to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to impugned order dated 01.01.2013 passed in C.No.VIII/13/18/2011 CHAL by the 2nd respondent and forbear the 1st respondent from proceeding against the petitioner under Regulation 21 of CHAL, 2014.

2.The petitioner M/s A.M.Ahamed & Co are Custom House Agents. They had filed bills of entry for clearance of injection module machines, surface grinders and milling machines during 2009 on behalf of the importers M/s.I Tech Imports & Exports, Chennai. The Directorate of Revenue Intelligence (DRI) booked the importer on charge of undervaluation of the consignments and arrayed the



petitioner as abettor in the case under the Customs Act. The petitioner submits that the declaration in the bill of entry was signed by the Importer. DRI finds that the original invoice with higher value was communicated by the Manager, I Tech Imports & Exports to one Mr. Ganesh, a holder of H Card of the petitioner's firm through E-Mail and therefore, the petitioners are in the know of the fraud committed by the Importer. Mr. Ganesh, in his statement had denied seeing the mail and feign ignorance of the alleged undervaluation. In the aforementioned situations, the petitioner resists vicarious liability in the proceedings before various forum including in the Writ Petition.

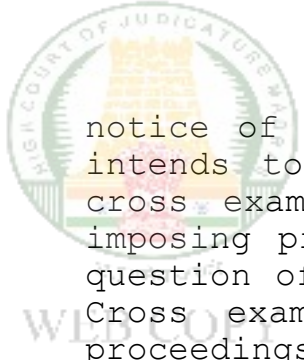
3. The case was adjudicated upon and a total penalty of Rs.3 lakhs was imposed on the petitioner on the charge of abetment. On appeal before the first appellate authority, the penalty was reduced to Rs. 2,20,000/- vide OIA No 36/2011 dated 28.04.2011. The petitioner has preferred an appeal before the CESTAT along with application for stay and waiver of Pre-deposit which is pending adjudication before CESTAT.

4. The petitioner submits that the department was insisting on payment of penalty amount while the petitioner had requested them to wait for the outcome of the stay application before the Tribunal and restrain from recovery action pending stay application relying on the Medopharm Pharmaceutical's case. The department was persistent with recovery actions including refusal to process the Bills of Entry filed by the petitioner. Therefore, the petitioner had preferred writ petitions in W.P.Nos 13584 & 13585 before this court and the recovery action was stayed vide order dated 29.11.2011.

5. The petitioner avers that even when the recovery action was stayed by this Hon'ble Court, an order dated 06.09.2012 was received from the department prohibiting the petitioner to work in Tuticorin Customs Commissionerate with immediate effect under Regulation 21 of the CHALR, 2004, allegedly on the same issue that is pending adjudication before the CESTAT. As the principles of natural justice was not followed in issuing the order, the petitioner got relief from this Hon'ble court in order dated 15.10.2012 in WP(MD)No.12046 of 2012. The prohibition order was set aside by this Court.

6. In furtherance of the above order, the Superintendent (CHA) issued a notice of personal hearing dated 19.12.2012. In response, the petitioner sought cross examination of certain persons to defend their case. They had also mentioned to the 1st respondent that the parent commissionerate at Chennai had issued Show cause notice dated 12.11.2012 to the petitioners proposing to revoke the licence on the same issue. The petitioners had requested the 1st respondent to keep the prohibition proceedings in abeyance until the Show Cause notice dated 12.11.2012 is adjudicated.

7. The respondents submit that the impugned communication dated 01.01.2013 is not at all an order and is only an intimation letter sent to the Writ Petitioner calling them to appear for personal hearing on 10.01.2013. It was averred that the communication was a



notice of personal hearing to appear before the 1st respondent who intends to hear the case. It was denied that the opportunity of cross examination was denied to them. It was submitted that in imposing prohibitive action under Regulation 21 of CHALR, 2004 the question of cross examination does not arise. It was submitted that Cross examination will be available to the petitioners in the proceedings in the Show Cause Notice issued under Regulation 22 of the CHALR, 2004 by Commissioner, Chennai. They also relied on the decision of the Hon'ble Supreme Court reported in 2010 (4) SCC 722.

8. Heard the counsels for the petitioner and the respondents and perused the records.

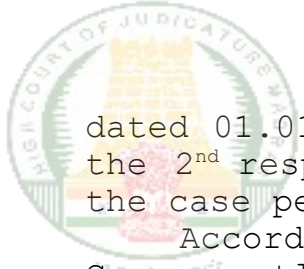
9. The grievance of the petitioner arise from the multiplicity of proceedings initiated by the respondents at varying times in consequence of the offence case booked by DRI against one of their clients and arrayed as an abettor for his role in the clearance of the disputed goods. It is reported that the importer had moved settlement commission and obtained certain relief. And some submissions are made on the merits of the petitioner on the original case. The petitioners case is pending before the CESTAT from 2011 and therefore CESTAT will be the right body to consider the submission on merits. Two Writ petitions came to be filed against the parallel proceedings initiated under the CHALR, 2014 and this court was pleased to grant relief to the petitioner. In Order dated 15.10.2012 in WP.No.12046 of 2012, this court had set aside the prohibition order on the grounds of not following the principles of natural justice. Therefore, it is not correct on the part of the respondents to say the opportunity to cross examine need not be given in the proceedings under Regulation 21 of CHALR, 2014.

10. The perennial litigations from 2009 in the attempt at enforcing the punitive provisions under the CHALR, 2014 against the petitioner is a classic case of cat and mouse game between the Department and petitioner that is nobody's cause. A cursory reading of regulations 13 and 21 indicates that the prohibition contemplated under Regulation 21 is aimed at separating the CHA from access to offices and sections connected to the offence to prevent unwanted influence or sabotage. This order is normally passed immediately after the commission of any offence. In other words, Regulation 21 will outlive its purpose once substantive investigations in the offence case is over.

11. The consequences of wrong doing for a CHA licensee is in the suspension and revoking of the license of the CHA under Regulation 22. And also, once proceedings under Regulation 22 is initiated which is normally done after the completion of investigations in a case, the proceedings under Regulation 21 go redundant. The entitlement to do the business of CHA is to be tested in a proceedings under Regulation 22 of CHALR, 2014. And Regulation 21 cannot be used as a tool to prevent the CHA from doing business.

<https://hcservices.ecourts.gov.in/hcservices/>

12. In view of the above discussions, the impugned communication



dated 01.01.2013 passed in C.No.VIII/13/18/2011 CHAL on the file of the 2nd respondent is quashed. No opinion is made on the merits of the case pending before CESTAT.

Accordingly, the Writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/

Assistant Registrar(CS-II)

/True copy/

Sub Assistant Registrar(CS-I)

To

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

2)The Asst. Commissioner of Customs (CHA)
Custom House,
Tuticorin-628 004.

+1cc to Mr.HARI RAMAKRISHNAN, Advocate, SR.No.92919

+1cc to Mr.R.Nandakumar, Advocate, SR.No. 92708

W.P(MD)No.496 of 2013
29.10.2018

BALA

KK/RP/SAR-1/26.11.2018/4P-5C