IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.07.2019

Coram

THE HONOURABLE MR. JUSTICE M.SUNDAR

W.P.No.7246 of 2019
and WMP.No.7961 of 2019

M/s. Ringo Cargo Care,
rep. By its Properietor Mr. T. Ringo Rajasingh,
D.No.5, S.M. Plaza, II Floor,
93 Armenian Street,
Chennai - 600 001.

... Petitioner

vs.

The Commissioner of Customs (Chennai-IV),
Custom House,
No.60, Rajaji Salai,
Chennai - 600 001.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, call for the records relating to the impugned Order-in-Original No.67502/2019 dated 11.02.2019 issued by the respondent, quash the same as far as the petitioner is concerned.

For Petitioner : Mr.A.Mohamed Ismail

For Respondents : Mr. A.P.Srinivas
Senior Standing counsel

ORDER

Mr.A.Mohamed Ismail, learned counsel on record for writ petitioner is before this Court. Mr.A.P.Srinivas, learned Senior Standing Counsel on behalf of lone official respondent is before this Court.

2. With consent of learned counsel on both sides, main writ petition itself is taken up, heard out and is being disposed of.

3. Writ petitioner before this Court is a Customs Broker with a valid 'Customs Broker Licence' (hereinafter 'CBL' for brevity) issued by an appropriate Authority.

4. Customs Broker Licence Number is IND/001/2007 and it is not in dispute that the same is valid up to 2027. Authority, who has issued Customs Broker Licence is, Indore Customs Commissionerate. To be noted, vide the CBL, writ petitioner has been allowed to transact business in Chennai Customs by Chennai Customs Commissionerate.

5. In the course of the business activity, service of the writ petitioner was engaged by one M/s. Shree Radhakrishna Textiles, Gujarat for exporting goods declared as 100% poly knitted boys jacket (fancy) to Dubai. For export of aforesaid consignment to Dubai, writ petitioner in its capacity as Customs Broker filed as many as six shipping bills, all dated 15.09.2018. Considering the trajectory of the hearing today, it may not be necessary to advert to those particulars in great detail.

6. Suffice to say that it is the case of the respondent that the said consignment appears to be of inferior quality and did not appear to be of value that was declared. To be noted, the exporter and obviously, the writ petitioner in the capacity of Customs Broker of the exporter had declared the value at US$ 6 Dollars per piece.

7. In sum and substance, it is the case of the respondent that consignment was over invoiced. It is a case of over invoicing.

8. It is the case of the respondent that thereafter some market enquiry was made in this regard and an order being 'order dated 11.02.2019 bearing reference No.67502/2019' (hereinafter 'impugned order' for the sake of brevity and clarity) came to be passed.

9. Assailing the impugned order primarily on the ground that the writ petitioner was not given notice under Section 124 of 'The Customs Act, 1962' (hereinafter 'said Act' for brevity), instant writ petition has been filed.

10. It is not in dispute that impugned order is a composite order, wherein orders have been passed both against the writ petitioner in writ petitioner's capacity as CBL holder and the aforementioned exporter. As far as the writ petitioner is concerned, a penalty of Rs.1 lakh has been imposed under Section 117 of the said Act and a recommendation has been made for initiation of enquiry against the writ petitioner under 'Customs Broker Licensee Regulations, 2018' ('CBRL' for brevity). There are other aspects of the impugned order against the exporter, but this Court is informed by Revenue counsel that the exporter has not chosen to assail the impugned order and therefore, it is not necessary to going into those aspect of the matter.

11. As far as the pivotal issue in the instant writ petition, namely the impugned order not being preceded by a notice under Section 124 of said Act to the writ petitioner is concerned, a perusal of the impugned order reveals that a personal hearing had been held and writ petitioner's Assistant Manager participated in the personal hearing.

12. Learned revenue counsel, supported the impugned order on two grounds. One ground is that personal hearing has been held and therefore it cannot be gainsaid that there is a violation of 'natural justice principles' ('NJP' for brevity). The second ground is that writ petitioner has clearly admitted that the writ petitioner in its capacity as CBL holder has failed to verify the correctness of the value and the quality of the consignment, which was scheduled for export.

13. With regard to the aforesaid two aspects, this Court has carefully considered the rival submissions.

14. Personal hearing, no doubt, has been held and the writ petitioner has no doubt participated in the same through its Assistant Manager. However, in the considered view of this Court, it cannot be gainsaid that this alone satisfies the NJP owing to the language in which Section 124 of said Act, more particularly, Sub-clauses (a) & (b) therein are couched. Adverting to Sub-clause(a) of Section 124 , learned counsel for writ petitioner pointed out that a notice under Section 124 (when a penalty is proposed to be imposed) is imperative as the noticee should be informed about the grounds on which the penalty is proposed to be imposed so that there can be effective representation by noticee. Absent such notice, personal hearing is of no consequence qua NJP is learned writ petitioner counsel's further say.

15. It is the specific case and stated position of writ petitioner that if the grounds i.e., grounds on which penalty was proposed to be levied had been communicated in accordance with Section 124(a) of the said Act, the writ petitioner would have been able to meet the same. In this view of this matter considering facts of this case, this Court is left with the considered view that personal hearing alone does not satisfy NJP in the instant case. In other words, this Court sustains the submission of learned counsel for writ petitioner in this regard.

16. With regard to the second ground that writ petitioner has admitted in its capacity as CBL holder that it has failed to verify the correctness of the value and quality of the export consignment, which was exported, the question as to whether it is the responsibility of the customs broker to so verify is left open owing to the nature of the order, which this Court proposes to pass. In other words, it is open to the writ petitioner to contend that duty is not cast on the customs broker licensee to verify the value and the quality of the consignment. It is open to the respondents to take a decision on the same.

17. A perusal of the impugned order brings to light that penalty has been imposed on the writ petitioner not merely on the ground that writ petitioner failed to verify the correctness of the value and the quality of the consignment, but penalty has been imposed on the writ petitioner also on the ground that writ petitioner being customs broker has colluded with the exporter to split up shipping bills to avoid customs examination. Learned counsel for writ petitioner submits that if the grounds have been communicated to the writ petitioner by way of a notice under Section 124 (a) of the said Act, the writ petitioner would have been able to dispel/disabuse the respondent's assumption that there was a collusion between the writ petitioner and the exporter. Therefore, in the peculiar facts and circumstances of the instant case, this Court is convinced that the writ petitioner ought to have been given a notice under Section 124 (a) of the said Act clearly setting out the grounds on which the penalty was proposed to be imposed, so that the writ petitioner would have got an opportunity to dispel the same.

18. As far as the exporter is concerned, as already alluded to supra impugned order is a composite order and this Court is informed by Revenue counsel that exporter has not chosen to assail the impugned order. This assumes significance as a perusal of the impugned order reveals that exporter has clearly waived issue of notice under Section 124 (a) of the Act. In this regard, learned counsel for writ petitioner submits that in contradistinction, writ petitioner has not waived issue of

notice though writ petitioner participated in the personal hearing.

19. In the light of the narrative thus far, the following order is passed by this Court:

a) The impugned order being order dated.11.02.2019 bearing reference No.67502/2019 is set aside in so far as the writ petitioner is concerned. It is made clear that the impugned order in so far as it pertains to the exporter is concerned, the same is not interfered with and it will continue to operate. It is open to the respondent to carry to its logical end qua exporter.

b) With regard to the writ petitioner, the respondent shall issue a notice under Section 124 of said Act to the writ petitioner within a period of fortnight from the date of receipt of a copy of this order. In this notice as mandated under Section 124(a) of the Act, the grounds on which the penalty is proposed to be imposed shall be set out besides other necessary particulars.

(c) The writ petitioner on receipt of aforesaid notice shall send a reply/representation in writing against the grounds on which the penalty is proposed to be imposed within a period of a fortnight from the date of receipt of notice. Thereafter, a personal hearing shall be held by giving sufficient advance notice to the writ petitioner.

(d) After the aforesaid process, depending on the writ petitioner's representation, particularly under Section 124(b) of the said Act and what transpires in the personal hearing, orders considered appropriate by the respondent shall be passed afresh.

(e) The order which is passed in the aforesaid manner by the respondent shall be communicated to the writ petitioner under due acknowledgement within 7 working days from the date of order.

20. With the above observations, this writ petition is disposed of. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

The Commissioner of Customs (Chennai-IV),
Custom House,
No.60, Rajaji Salai,
Chennai - 600 001.

+1cc to Mr.A.Mohamed Ismail, Advocate Sr.59474
+1cc to Mr.A.P.Srinivas, Advocate Sr.59175

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srg 26/08/2019