

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

W.A.No.2457 of 2019 AGAINST W.P.NO. 1544 OF 2019
and
CMP No.16132 of 2019

M/s.Shriwin Shipping & Logistics
Door No.76/80, Moore Street
Chennai - 600 001
rep.by its Partner G.Nathavel Appellant/Petitioner

-Vs-

The Commissioner of Customs
Chennai VIII Commissionerate
No.60, Rajaji Salai, Custom House
Chennai - 600 001. Respondent /Respondent

Prayer : Writ Appeal under Clause 15 of the Letters Patent,
against the order passed by this Honourable Court in
W.P.No.15544 of 2019 dated 28.06.2019.

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records pertaining to order in original No.69097/2019 dated 23.05.2019 passed by the respondent herein and to quash the same insofar as the said order for revocation of the license No.R-220/2012-CHA (PAN No.ACDFS7892RCH001) of the petitioner partnership firm, M/s.Shriwin Shipping & Logistics in terms of Regulation 17(7) of Customs Broker Licensing Regulations, 2018 (read with Regulation 20(7) of CBLR, 2013) and the further forfeiture of security deposit of Rs.25,000/- under Regulation 14 of CBLR, 2018 and the imposition of penalty of Rs.50,000/- under Regulation 18 of CBLR 2018 on the petitioner partnership firm M/s.Shriwin Shipping & Logistics is without jurisdiction and without following the due procedures of law and in excess of the powers conferred with the respondent and in gross violation to the principles of natural justice and the fundamental rights guaranteed to the petitioner under the Constitution

For Appellant : Mr.T.Mohan for M/s.S.Baskaran
For Respondents : M/s.Syed Nurullah Sheriff,
Standing Counsel

J U D G M E N T

(Judgment of the Court was delivered by DR.VINEET KOTHARI, J.)

This appeal has been filed against the order dated 28.06.2019 in W.P.No.15544 of 2019. The learned Single Judge dismissed the writ petition on the ground that the petitioner has an alternate remedy. The operative portion of the order passed by the learned Single Judge is quoted below for ready reference.

" (a). It is held that the impugned order of respondent being order dated 23.05.2019 bearing reference order-in-original No.69097/2019 is not vitiated by violation of 90 days time frame either under Regulation 17(5) of CBLR 2018 or under Regulation 20(5) of CBLR 2013;

(b) All other questions pertaining to impugned order and challenge to the same are left open;

(c) It is open to the writ petitioner to file an appeal under Section 129A(1) of the Customs Act, 1962, to CESTAT against impugned order;

(d) If writ petitioner chooses to avail alternate remedy and file an appeal to CESTAT, it is open to writ petitioner to seek condonation of delay as well as exclusion of time spent in this writ petition in the light of Section 14 of the Limitation Act, and if writ petitioner chooses to do so, CESTAT shall decide such applications on its own merit;

(e) Subject to delay condonation application and application if any seeking exclusion of time under Section 14 of the Limitation Act, if writ petitioner chooses alternate remedy, CESTAT shall decide the appeal on merits by examining all grounds and questions except violation of Regulation 17(5) of CBLR 2018 and Regulation 20(5) of CBLR 2013 which has been decided by this Court in instant order and dispose of the appeal as expeditiously as possible.

(f) Considering the importance of time frames in such matters, this Court requests the Tribunal, ie., CESTAT to dispose of the appeal as expeditiously as possible and in any event, within a time frame of three months from the date on which the appeal is filed, if it is filed."

2. Learned counsel for the appellant urged before us that the said Tribunal before which the appeal now lies, under the provisions of Section 129A of the Act, is not presently working. However, later on, upon instructions, he submitted that some temporary arrangements have been made and a single member bench is presently working in Chennai. Learned counsel appearing for the Central Government also submits that presently a single member Bench is working.

3. Having heard the learned counsel for both the parties, we are of the clear opinion that the writ appeal, in such circumstances, cannot be entertained. When the appellant has an alternative remedy under the provisions of the Act itself, writ jurisdiction cannot be normally invoked unless the issues like patent lack of jurisdiction, validity of Acts and Rules etc., are involved. The contention of the learned counsel for the appellant that the show cause notice was issued beyond the prescribed limitation and the Order-in-Original was not passed within the prescribed limitation, is not sufficient at all to invoke writ jurisdiction. Such grounds can always be raised before the appellate forum provided under the Act.

4. Therefore, we are not inclined to entertain the present writ appeal. As far as the constitution of the Bench of Tribunal is concerned, the appellant is free to approach the appropriate authority or the Central Government itself for proper constitution of the Tribunal in an effective manner at Chennai.

5. With the above observations, the writ appeal is dismissed. If any appeal is filed by the appellant before the Tribunal within a period of one month from this date, the Tribunal may decide the same on merits without objecting to the limitation and without being influenced by the observations made by the learned Single Judge. No costs. Consequently, the connected miscellaneous petition is also dismissed.

सत्यमेव जयते

Sd/-

Assistant Registrar (CS-III)

//True Copy//

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Sub Assistant Registrar

KST

To

The Commissioner of Customs
Chennai VIII Commissionerate
No.60, Rajaji Salai, Custom House
Chennai - 600 001.

+2cc to Mr.S.Baskaran, Advocate, S.R.No.66158

+1cc to Mr.G.M.Syed Nurullah Sheriff, Advocate, S.R.No. 66121

W.A.No.2457 of 2019

RJ(CO)
GN(20/08/2019)



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