IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.12.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.31763 of 2017
and
W.M.P.No.34907 of 2017

M/s.Sea Queen Shipping Services Pvt., Ltd.,
No.1, Kapali, Arunachalapuram,
Second Street, Adyar,
Chennai 600 020
Represented by its Managing Director,
S.Padmanabhan ... Petitioner

vs.

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

PRAYER: : Writ Petition is filed under Article 226 of the Constitution of India, writ of Certiorari, calling upon the records pertaining to the Order-in-Original No.59094 of 2017 dated 13.10.2017 and quash the same.

For Petitioner : Mr.J.V.Niranjan

For Respondents : Ms.Hema Murali Krishnan
Senior Standing Counsel

O R D E R

Heard learned counsel for the petitioner Mr. J.V. Niranjan and the learned counsel for the revenue Mrs.Hema Murali Krishnan.

2. The petitioner has filed the present writ petition to quash the impugned Order in Original No. 59094 of 2017 dated 13/10/2017 passed by the respondent. The impugned order has been passed pursuant to show cause notice dated 13.2.2017 under Regulation No. 20 (1) of the Customs Brokers Licensing

Regulations, 2013.

3. The petitioner a licensed Custom House Agent was issued with the aforesaid show cause notice pursuant to an offence report received from the Special Investigation and Intelligence Branch (Import), JNCH, Mumbai vide F.No. S.G/Misc-92/2016-17 SIIB (1) J NCH dated 06.09.2016. It is the case of the petitioner that the invocation of Regulation 20 (1) of the above Regulation was contrary to settled principles of law.

4. The learned counsel for the petitioner submits that Regulation 20(1) of the above Regulations contemplated issue of show cause notice within 90 days from the date of receipt of an offence report for revoking a license or for imposing a penalty. It is the contention of the petitioner that the show cause notice was issued beyond the period of 90 days of the offence report and thus contrary to the Regulation 20 (1) of Custom House Agent Licensing Regulations, 2004 and was therefore time barred. Hence, the impugned order was liable to be quashed as without jurisdiction.

5. The learned counsel for the petitioner relied on the decision of this court rendered in a batch of writ petitions in W.P.Nos. 3366, 1855, 1 8060, 6755, 18755, 22154 of 2019 and 31383 of 2018, 27948, 28726, 28850, 28858 of 2019 dated 28.11.2019 and the decision of a Division Bench of this Court dated 13.10.2017 in C.M.A. 730 of 2016. In the 2nd mention case, it has been held as follows:-

> "44. Since the offence report was dated 22.9.2010 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."

6. It is therefore contended that the show cause notice was time-barred and therefore the show cause proceeding which has culminated in the impugned order was without jurisdiction.

7. Per contra, the learned counsel for the respondent submits that the petitioner has an alternate remedy against the impugned order passed by the respondent before the Customs and Excise Service Tax Appellate Tribunal and therefore the writ petition was liable to be dismissed.

8. The learned counsel for the respondent further submits that the petitioner had also challenged the show cause notice in an earlier writ petition in W.P.Nos. 20994 and 26820 of

2017 but had withdrawn the writ petition in W.P.No. 26820 of 2017 which was recorded in the order dated 13.10.2017 and therefore the present writ petition is liable to be dismissed on this score also.

9. I have considered the arguments advanced on behalf of the petitioner and the respondent.

10. In W.P.No. 26820 of 2017, the petitioner had challenged another show cause notice dated 6.9.2017 issued to the petitioner. The said writ petition was withdrawn as was recorded in the order dated 13.10.2017. Therefore, dismissal of the above writ petition after recording the willingness of the petitioner to participate in the said show cause proceeding dated 6.9.2017 is of no relevance.

11. As per Regulation 20 (1) the show cause notice has to be issued within a period of 90 days " receipt of the offence report." Respondent has not
stated as to when the report was received. In any event, the Division Bench of Court while passing its order on 13.10.2017 in C.M.A. 730 of 2016 has viewed that show cause notice was beyond the period of 90 days from the date of the offence report. In the facts of the present case, it is evident that the offence report was dated 6.9.2016 and therefore the last date for issuing the aforesaid show cause notice would have been 04.12.2016.

12. As the issues regarding the limitation is now squarely covered by the above decision of the Division Bench of this Court the issue in favour of the petitioner I am therefore of the view that even though the petitioner had an alternate remedy, there is no point in relegating the petitioner to the alternate remedy at the stage.

13. Since, the show cause notice dated 13.2.2017 is to be construed beyond the period of limitation, in the light of the above decision of the Division Bench of this Court in C.M.A.No.730 of 2016, the impugned order is also liable to be held without jurisdiction and is therefore liable to be quashed.

14. In the light of the above discussion, the impugned order is quashed as prayed for with consequential relief to the petitioner. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

rst/kkd

To

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

+1cc to Mr.J.V.Niranjan, Advocate SR.103556
+1cc to Mrs.Hema Muralikrishnan, Advocate SR.102887

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and W.M.P.No.34907 of 2017

CA(CO)
CB(27/01/2020)