BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 22.03.2019
CORAM:
THE HON'BLE Mr. JUSTICE K.KALYANASUNDARAM
AND
THE HON'BLE Mrs. JUSTICE R.THARANI

W.A.(MD)Nos.972 and 973 of 2014
and
M.P.(MD)Nos.3,3 and 4 of 2014

W.A.(MD)No.972 of 2014:

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

2.The Assistant Commissioner of Customs,
Custom House,
New Harbour Estate,
Tuticorin 628 004. ... Appellants/Respondents

Vs.

Essar Ve Enterprises,
Rep.by its Partner
K.Hari Rajesh,
No.100 B/1, SS Moorthy Street,
Tuticorin 620 002. ... Respondent/Petitioner

PRAYER: The Appeal filed under Clause 15 of Letters Patent Act, against the common order passed by the Learned Single Judge of this Court in W.P.(MD)No.16459 and 16460 of 2012 dated 04.01.2013.

Prayer in WP(MD). 16459 of 2012 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari and call for the records pertaining to impugned show cause notice C. No. VIII/13/35/2001-CHAL Dated 11.05.2012 issued under Regulation 22(1) of Custom House Agents Licensing Regulations, 2004 by the 1st Respondent and quash the same.

W.A.(MD)No.973 of 2014:

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

2.The Assistant Commissioner of Customs,
Custom House,
New Harbour Estate,
Tuticorin 628 004. ... Appellants/Respondents

Vs.

Essar Ve Enterprises,
Rep.by its Partner
K.Hari Rajesh,
No.100 B/1, SS Moorthy Street,
Tuticorin 620 002. ... Respondent/Petitioner

PRAYER: The Appeal filed under Clause 15 of Letters Patent Act, against the common order passed by the Learned Single Judge of this Court in W.P.(MD)No.16459 and 16460 of 2012 dated 04.01.2013.

Prayer in WP(MD). 16460 of 2012 :
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue any writ or order or direction most particular in the nature of writ of certiorari and call for the records pertaining to impugned inquiry report dated 17.10.2012 issued under regulation 22(5) of custom House Agents Licensing Regulations, 2004 by the 2nd Respondent pending and quash the same.

For Appellants : Mr.R.Nandakumar
For Respondent : Mr.Hari Radhakrishnan

COMMON JUDGMENT

(Judgment of the Court was delivered by K.KALYANASUNDARAM,J.)

Heard the learned counsel on either side.

2.These Writ Appeals have been directed against the common order of the Learned Single Judge passed in W.P.(MD)No.16459 and 16460 of 2012 dated 04.01.2013.

3.The second respondent was granted licence to act as a Customs House Agent. The said licence was suspended by the Commissioner of Customs on 08.06.2009 and the same was confirmed by a final order dated 15.10.2009. Thereafter, a show cause notice was issued to revoke the licence by a notice dated 11.05.2012. The said show cause was challenged on the ground that it was issued beyond the period of limitation. The Learned Single Judge allowed the Writ petitions. Assailing the said order, these Writ Appeals have been filed.

4.It is brought to the knowledge of this Court that the issue involved in this case is already decided by two Division Bench judgments in C.M.A.No.703 of 2016 dated 13.10.2017 and W.A.No.371 of 2015 dated 02.07.2015. The relevant paragraphs are extracted hereunder –

"31.At this juncture, this Court very relevantly points out that the "Customs House Agents Licensing Regulations, 2004" (CHALR, 2004) does not deal with the term 'offence report' anywhere but only in Regulation 22 (1). Indeed, the Regulation, 20(1) of CHALR, 2004, speaks of 'Suspension of Revocation of Licence'. Even this 'Regulation' is silent as to the term 'offence report'.

32.In this connection, it is worthwhile for this Court to extract the Regulation 20: 'Suspension of Revocation of Licence' which runs as follows:-

(a)failure of the Customs House Agent to comply with any of the conditions of the bond executed by him under regulation 10;

(b)failure of the Customs House Agent to comply with any of the provisions of these regulations, within the jurisdiction of the said Commissioner of Customs or anywhere else;

(c)any misconduct on his part, whether within the jurisdiction of the said Commissioner of Customs or any where else which in the opinion of the Commissioner renders him unfit to transact any business in the Customs Station.

(2)Notwithstanding anything contained in sub regulation (1), the Commissioner of Customs may, in appropriate cases where immediate action is necessary, [within fifteen days from the date of receipt of a report from investigating authority, suspend the licence] of a Customs House Agent where an enquiry against such agent is pending or contemplated.

(3)Where a licence is suspended under sub-regulation (2), notwithstanding the procedure specified under regulation 22, the Commissioner of Customs may, within fifteen days from the date of such suspension, give an opportunity of hearing to the Customs House Agent whose licence is suspended and may pass such order as he deems fit either revoking the suspension or continuing it, as the case may be, within fifteen days from the date of hearing granted to the Customs House Agent].

33.Furthermore, the Regulations CHALR, 2004 does not spell out what is an 'offence report' and the manner in which it is to be sent and the appropriate ' Competent Authority to send the same. Added further, the Regulation 22 of the CHALR, 2004 speaks of 'Procedure for Suspending or Revoking License under Regulation 20' and in appropriate cases, the Regulation 20(2) of CHALR, 2004 empowers the Commissioner of Customs to Suspend the Licence of an Agent in appropriate cases where immediate action is necessary. It cannot be gainsaid that Rule 22(3) specifies a time limit of 15 days. Further, it also determines the time limit enjoined under Regulation 22(5).

34.In the present case before this Court, the stand of the Appellants is that the Respondent / Petitioner was granted license by the Chennai Customs and they were operating in Tutucorin Customs. But the clear cut case of the Appellant / Respondents is that the Commissioner of Customs, Tuticorin had forwarded the case of the Respondent / petitioner to the 1st Appellant / Commissioner of Customs at Chennai only by means of a letter dated 06.09.2012 and based on that a show cause notice was issued on 12.11.2012 within a prescribed period of 90 days Sub-Regulation 1 of Regulations 22.

35.However, the significant aspect of the matter is that the Appellants in the Counter Affidavit filed in the Writ petition had denied the averments of the Respondent / Petitioner on the ground No.6 of paragraph No.16 to the effect that the show cause notice dated 18.05.2010 was issued by the Directorate of Revenue and Intelligence and the order in original dated 31.01.2001 passed by the Additional Commissioner, Tuticorin were all marked to the Chennai Commissionerate and that it can safely be concluded that the said Commissionerate had knowledge about it.

36.Coming to the aspect of the issuance of the show cause notice to the respondent / petitioner dated 18.05.2010 with a copy being marked to the 1st respondent, in the absence of what is meant by 'offence report' one can conveniently and safely take the show cause notice dated 18.05.2010, as the date of receipt of 'offence report'. Viewed in that perspective, the period of 90 days ought to commence from that date in the considered opinion of this Court.

37.In so far as the Appellants are concerned, they fall back upon a Circular No.9/2010 Customs in F.No.502/5/2008-Cus.VI, Government of India, Ministry of Finance, Department of Revenue issued by the Central Board of Excise and Customs dated 08.04.2010 wherein in paragraph No.5, it deals with 'Suspension of Revocation against CHAs operating on 'C' Form intimation basis, for fuller and better appreciation of the subject matter in issue, the paragraph No.5.2 is quoted as under:

> "Further, it is also clarified that the Commissioner of Customs at a customs station who had authorised a CHA to operate on 'C' Form intimation, should inform the details of violations to the Commissioner of Customs at the customs station from where the CHA licence was issued for such CHA, so that necessary action for suspension or revocation of CHA licence was issued for such CHA, so that necessary action for suspension or revocation of CHA licence, could be initiated by him. This would avoid duplication and ensure

uniformity in adjudication of a case against a CHA in suspension or revocation proceedings by the Customs filed formations. However, the Commissioner of Customs, who had authorised a CHA to operate on 'C' form intimation at a customs station, may take action in deserving cases under regulation 21 of CHALR, 2004 for prohibiting the working of such defaulting CHA in any section of the Custom House / Customs Station".

38.It transpires that the 1st Appellant / 1st respondent had received the show cause notice dated 18.05.2010 which can be construed as a notice. Besides this, 1st appellant / 1st respondent was in receipt of original order dated 31.01.2011. At this stage, this Court significantly points out that the respondent / petitioner in the Writ petition had categorically averred that the 1st appellant / 1st respondent had received the show cause notice as well as the order in original. As such, the show cause notice should have been issued within 90 days. In short, the 1st appellant / 1st respondent is without any haziness is to commence the proceedings within 90 days from the date of receipt of 'offence report', as opined by this Court."

5.In our considered opinion, the above decision squarely applies to the case on hand. In such view of the matter, these Writ Appeals fail and the same are dismissed. However, there is no order as to costs. Consequently, connected M.Ps.are closed.

Sd/-

Assistant Registrar (CRL SIDE)

// True Copy //

Sub Assistant Registrar(CS)

nbj

+1CC TO MR.M.RAJARAMAN, Advocate Sr. No.56162
+1CC TO MR.R.NANDAKUMAR, Advocate Sr. No. 56367

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MA(CO)
TR (06.05.2019) 5P 3C