IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 19.02.2020
CORAM
THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE R.SURESH KUMAR
Writ Appeal No.295 of 2015
and M.P.No.1 of 2015

M/s.Master Cargo Services
Represented by its Managing Partner
Mr.Jayakumar, New No.23, Old No.11
Vepery High Road, Al-mamoor, 2nd Floor
Periamet, Chennai - 600 003. ... Appellant

-Vs-

1.The Commissioner of Customs
Chennai-III(General), Chennai Seaport
Custom House, No.60, Rajaji Salai
Chennai - 600 001.

2.The Deputy Commissioner of Customs
(Customs Broker Section), Custom House
No.60, Rajaji Salai, Chennai 600 001.

3.Assistant Commissioner of Customs
Customs House, No.60, Rajaji Salai
Chennai 600 001. ... Respondents

Prayer : Appeals under Clause 15 of the Letters Patent against the order of this Court dated 19.01.2015 passed in W.P.No.30765 of 2014.

Prayer in W.P.No.30765 of 2014: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to Call for the records of the Third Respondent culminating in the issue of communication dated 17.11.2014 issued from File No.R-227/CHA and quash the same.

For Appellant : Mr.P.S.Raman, SC, for
Mr.S.Murugappan
For Respondents : Mr.G.M.Syed Nurullah Seriff
Senior Standing Counsel

J U D G M E N T
(Judgment of the Court was delivered by R.SURESH KUMAR, J.)

This intra Court appeal has been preferred against the order passed by the Writ Court in W.P.No.30765 of 2014 by a

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common order dated 19.01.2015 along with yet another writ petition in W.P.31096 of 2014.

2. The appellant was the writ petitioner before the Writ Court questioning the order issued by the respondent Revenue dated 17.11.2014, by which the respondent Revenue directed the writ petitioner / appellant to appear before the Authorities for participating in an enquiry to be conducted regarding whether the Customs Broker Licence of the petitioner / appellant which was already suspended, has to be revoked or the suspension should continue.

3. In this context, the learned Judge in the Writ Court, after having heard the learned counsel for both sides, has passed the following order.

> " 7.Heard both sides and perused the materials placed before this Court.
>
> 8.It is not in dispute that the petitioner was carrying on business with valid license, till it was expired on 30.11.2014. The petitioner instead of co-operating with the enquiry has approached this Court and obtained an Interim Order and he cannot blame the respondents for not considering his application. Since the license period of ten years has already expired and the application is pending before the authority, they should consider the case of the petitioner on merits and without being influenced or prejudiced by the earlier order passed by the Tribunal or by this Court in the present Writ Petition. The respondents shall also take into account the license given to petitioner before making final decision.
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> 9. The decision of the Calcutta High Court reported in 2009 (8) TMI 673 (Faideal Enterprises (P) Ltd., Vs. CC. (AIRPORT & ADMINISTRATION) will not be applicable to the facts of the case, as the provisions of Regulation 22 cannot be read along with to Regulation 20. Regulation 20 provides for immediate suspension whereas Regulation 22 provides for detail investigation. It is not necessary that the respondents shall follow the procedure laid down in Regulation 22 in the case of suspension under Regulation 20. But this Court makes it very clear that it is not mandatory and it is only discretionary on the part of the respondents to extend the procedure prescribed under Regulation 20 into the Regulation 22.

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10. Mr.G.Rajagopal, learned Senior Counsel appearing for the respondents drew the attention of this Court to the decision reported in AIR 1974 Supreme Court 1281 (V 61 C 247) (H.L.Mehra Vs.Union of India and others), wherein it has been held that in Paragraph No.8 "…..It is now well settled that when an authority passes an order which is within its competence, it cannot fail merely because it purports to be made under a wrong provision, if it can be shown to be within its power under any other provision. If the power is otherwise established, the fact that the source of the power has been incorrectly described in the order would not make it invalid......"

11.Similarly the decision reported in 2014, (309) E.L.T 440, (Montosh Kumar Saha Vs. Union of India) will not be applicable to the case on hand, as the period of license has already expired and paragraph no.18 is extracted below:-

> "…..18. There can be no doubt that a person guilty of commission of an offence may be debarred from licence. However, it is one thing to be charged with an offence and a different thing to be held guilty of actual commission of that offence. Chances of false implication cannot altogether be ruled out, particularly in a case like the present one, where family disputes have cropped up. It would, in my view, be totally arbitrary and against all norms of fair play to deprive a citizen of his right to carry on business in the absence of any verdict of a Court of law holding him guilty of criminal offence....."

12.This Court is not substitute of authorities under Customs Act to direct them to issue fresh temporary license, when there is no provisions for grant of temporary license. Hence I find no reasons to grant relief, as sought for, by the petitioner.

13.In the result, the Writ Petitions are disposed of by directing the respondents/authority concerned to consider the case of the petitioner with regard to grant of license on the application dated 17.10.2014 which is pending before them and pass orders within a period of three weeks from the date of receipt of copy of the order. This Court makes it very clear that the petitioner shall co-operate with the enquiry on the notice dated 17.11.2014, which has received and

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stayed by this Court. It is open to the authorities to conduct enquiry in terms of Regulations of Customs Act and also pass orders on merits and in accordance with law within period of one month from the date of receipt of copy of this order. Consequently, connected miscellaneous petitions are closed. No costs."

4. Aggrieved over the said order, the present appeal has been preferred by the licensee.

5. We have heard the learned counsel for the parties. It is brought to our notice by the learned counsel for the Revenue that, though notice has been given by the Revenue to the licensee to appear for enquiry in order to comply with the direction issued by the learned Judge in the order impugned directing the Revenue to consider the application of the licensee dated 17.10.2014, which was pending all along, the licensee has not chosen to appear before the authorities concerned of the Revenue.

6. Though this factor is disputed by the learned counsel for the licensee / appellant, no document has been produced by the licensee / appellant to show that in response to the said communication given by the Revenue to the licensee / appellant to appear before the authority concerned, the licensee / appellant appeared before such authority.

7. Be that as it may. Insofar as the direction given by the Writ Court in the impugned judgment is concerned, the learned Judge has made it very clear that, since the license of the appellant had already been expired sometime in the year 2014 itself, the question of restoring the said license at this point of time may not arise. Therefore, the application already given in this regard by the appellant licensee dated 17.10.2014 can very well be considered on merits by the Revenue and that is the reason why the learned Judge has given such direction in the impugned judgment.

8. After having perused the said judgment, we are of the view that, the said direction does not require or warrant any interference from this Court, as the appellant licensee has to necessarily appear before the authorities concerned and whatever ground he want to urge, can be put forth before the authorities concerned, which should be considered and decided by the Revenue and accordingly a decision can be made whether the Customs Broker license to the appellant afresh can be given or not.

9. In that view of the matter, we are not inclined to interfere with the order passed by the Writ Court. Therefore, this Writ Appeal deserves to be rejected. However, since it had

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not been made clear before this Court as to whether the enquiry has been conducted pursuant to the notice issued in this regard by the Revenue, we are inclined to give an opportunity to the appellant licensee to appear before the authorities concerned and accordingly the appellant licensee shall appear before the authorities concerned on 10.03.2020. It is made clear that no separate intimation or notice will be issued by the Revenue in this regard and therefore, pursuant to this order, the appellant shall appear before the authorities concerned as indicated above without fail and can urge whatever grounds he wants to urge to get the license afresh.

10. It is further directed that once the appellant appears before the revenue / authorities concerned, the case to be put forward by the appellant shall be considered on its own merits and in accordance with law and a reasoned order shall be passed by the Revenue within a period of two weeks thereafter. The present Writ Appeal is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-III)

// True Copy//

Sub Assistant Registrar

KST
To

1.The Commissioner of Customs
Chennai-III(General), Chennai Seaport
Custom House, No.60, Rajaji Salai
Chennai – 600 001.

2.The Deputy Commissioner of Customs
(Customs Broker Section), Custom House
No.60, Rajaji Salai, Chennai 600 001.

3.Assistant Commissioner of Customs
Customs House, No.60, Rajaji Salai
Chennai 600 001.

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+1cc to Mr.S.Murugappan, Advocate, SR.No.13910.
+1cc to Mr.G.M.Syed Nurullah Seriff, Advocate, SR.No.14968.

W.A.No.295 of 2015

KJ(CO)
CSR: 20.03.2020
GMY(14/08/2020)

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