

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.38433 and 38434 of 2015
and
M.P. Nos. 2 & 2 of 2015

M/s. HSN Shipping Private Limited,
Rep. By its Managing Director
Mr.A.C. Hari Babu,
Old No.45, New No.89, IInd Floor,
Marine Towers, Thambu Chetty Street,
Chennai - 600 001. ... Petitioner (In both W.Ps.)

Vs.

1. The Commissioner of Customs,
Chennai - VIII Commissionerate,
Customs Broker Section,
Custom House, No.60, Rajaji Salai,
Chennai - 600 001.
2. The Assistant Commissioner of Customs,/
The Inquiry Officer,
Customs Broker Section,
Custom House, No.60, Rajaji Salai,
Chennai - 600 001. Respondents (In both W.Ps.)

Prayer in W.P. No.38433 of 2015: Writ Petition is filed under article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the entire records of the 1st respondent leading to the issuance of the Impugned order dated 02.07.2015 issued in F.No.R-308/CHA and order no.39410/2015 by the 1st respondent and quash the same.

Prayer in W.P. No.38434 of 2015: Writ Petition is filed under article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the entire records of the 1st respondent leading to the issuance of the Impugned notice/proceedings under Regulation 20 of CBLR 2013 dated 07.07.2015 issued in F.No.R-308/CHA by the 1st respondent and quash the same.

For Petitioner : Mr.A.K. Jayaraj
(In both W.Ps.)

For Respondent : M/s.Hemalatha
(Senior Standing Counsel)
(In both W.Ps.)

C O M M O N O R D E R

By this Common order, both the Writ petitions are being disposed.

2.The petitioner was issued with the Customs Broker license on 02.05.2014. By an order dated 09.06.2015, the petitioner's license was suspended under Regulation 19(1) of the Customs Broker Licensing Regulations, 2013. The reason for suspending the aforesaid license of the petitioner was on account of certain irregularities attributed to the petitioner due to alleged forgery by staff of the petitioner of the signature of the clerk of the Container Freight Station pursuant to a complaint by the custodian of the imported goods namely M/s. German Express Shipping Agency. It appears there was also an admission of forgery by the staff of the petitioner. Thereafter, vide impugned order in Original No.39410/2015 dated 02.07.2015, the order of suspension dated 09.06.2015 was continued until further orders.

3. The 1st respondent has issued the impugned notice to the petitioner dated 07.07.2015 (impugned in W.P. No.38434 of 2015). The respondent has invoked the powers vested with under regulation 20 of the Customs Brokers Licensing Regulations, 2013 while issuing the impugned notice dated 07.07.2015.

4.The petitioner has thus challenged both the impugned orders suspending the license and the notice issued to revoke the license under regulation 20 of the Customs Broker Licensing Regulations, 2013 in these writ petitions.

5. The learned counsel for the petitioner submits that Regulation 20 contemplates initiation of proceedings within 90 days from the date of receipt of offence report. In this case, the respondent have admitted that the offence report dated 18.02.2015 was received on 23.02.2015. He therefore submits that as per decisions of this Court rendered in "Masterstroke Freight Forwarders Case" by an order dated 27.10.2015 in a batch of writ petitions and the decision of the learned single judge in "Patriot Freight Logistics Systems Versus Commissioner of Customs, 2017(350) ELT 59 and a decision of the Division Bench of this Court in C.M.A. No.730 of 2016 in "Santon Shipping Services versus Commissioner of Customs" passed on 13.10.2017, the impugned notice dated 07.07.2015 (impugned in W.P. No.38434 of 2015) was liable to be quashed.

6. Per contra, the learned counsel for the respondents submits the period of 90 days in regulation 20 is only directory and not mandatory and therefore, there is no reason to quash the impugned order and the due notice.

7. I have considered the arguments of the learned counsel for the petitioner and the respondents. The issue is

squarely covered by the above decision of this Court cited by the learned counsel for the petitioner. Therefore, the impugned notice dated 07.07.2015 (impugned in W.P. No.38434 of 2015) is liable to be quashed.

8. As far as the impugned order dated 9.6.2015, (impugned in W.P. No.38433 of 2015) to suspend the petitioner's Customs Brokers License is concerned and its subsequent extension though in terms of Regulation 19, nevertheless is liable to be quashed at this point of time as the impugned notice dated 07.07.2015 is being quashed as being issued beyond the period of limitation. Therefore, there is no justification keeping the petitioners' license suspended any longer. Therefore, impugned order dated 09.06.2015 (impugned in W.P. No.38433 of 2015) is also quashed.

9. In the light of the above discussion, both the writ petitions are allowed with consequential relief to the petitioner. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

lbm

TO:

1. The Commissioner of Customs,
Chennai - VIII Commissionerate,
Customs Broker Section,
Custom House, No.60,
Rajaji Salai, Chennai - 600 001.
2. The Assistant Commissioner of Customs,/
The Inquiry Officer,
Customs Broker Section,
Custom House, No.60, Rajaji Salai,
Chennai - 600 001.

+1cc to Mr.R.Hemalatha, Advocate, S.R.No. 579

W.P.No.38433 and 38434 of 2015
and
M.P. Nos. 2 & 2 of 2015

LN(CO)
GN(27/02/2020)