IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2020

CORAM

THE HONOURABLE Dr. JUSTICE ANITA SUMANTH

W.P.No.2958 of 2018
and
WMP.No.3616 of 2018

M/s.Maruvur Arasi Logistics Pvt. Ltd.,
Catholic Centre, No.108, II Level,
Armenian Street, Chennai-600 001.
Rep. by its Managing Director D.Bhaskaran .. Petitioner

Vs.

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

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records pertaining to order in original No.61077/2018 dated 18.01.2018 passed by the respondent herein and to quash the same, in so far as the said order of revocation of license in terms of Regulation 20(7) of CBLR, 2013 and the imposition of penalty of Rs.50,000/- in terms of Regulation 18 of CBLR, 2013 is without jurisdiction and authority of law and in excess of the powers conferred with the respondent.

For Petitioner : Mr.S.Baskaran

For Respondent : Mr.S.Rajasekar, Panel Counsel
for Mrs.R.Hemalatha, Senior Standing Counsel

ORDER

Heard Mr.S.Baskaran, learned counsel appearing for the petitioner and Mr.Rajasekar, learned counsel for Mrs.R.Hemalatha, learned Senior Standing Counsel appearing for the respondent.

2.The petitioner is a customs house agent holding a CHA licence valid till 19.11.2022. The present writ petition challenges an order dated 18.01.2018 issued under Regulation 20(7) of the Customs Brokers Licencing Regulations, 2013 (in short CBLR), revoking the licence issued to the petitioner with immediate effect, imposing a penalty of Rs.50,000/- under Regulation 18 of CBLR, 2013 without forfeiture of security and calling for the surrender of various cards issued to the employees forthwith.

3.The facts, briefly stated to the extent to which they are relevant to this writ petition are as follows:

Intelligence appears to have been gathered by the Special Intelligence and Investigation Branch (SIIB) of the Customs Department regarding alleged misuse of Notification Nos.46/2011 and 69/2011 dated 01.06.2011 and 29.07.2011 by several importers in the import of goods falling under Chapter-72 of the Customs Tariff Act, by claiming exemption wrongly and paying concessional rate of duty as against merit rate of duty.

4.A show cause notice (SCN) was issued by the Commissioner, SIIB on 09.05.2017 calling upon various entities including the petitioner to show cause why penalty not be imposed for abating the imports effected without compliance of various regulations of the Customs House Agents Licensing Regulations, 2004. Copies of the notice were also issued to the Commissioner, Adjudicating Unit, the Deputy/Assistant Commissioner of Customs, Customs Broker Section, Master file and notice board. Based on the information contained in the aforesaid notice, a SCN dated 27.07.2017 was issued by the respondent calling upon the petitioner to show cause why their licence not be revoked and penalty imposed under the applicable regulations of the CBLR.

5.Despite objections raised by the petitioner, the proposal under notice was confirmed vide impugned order dated 18.01.2018.

6.This order is assailed by the petitioner on two points. Firstly, a violation is pointed out in terms of Section 20(1) of the CBLR which requires a notice to be issued by the respondent within a period of 90 days from date of receipt of an 'offence report'. According to the petitioner, it is unclear as to the basis upon which SCN dated 27.07.2017 was issued and thus the notice was itself is bad in law. The question before me is thus whether the SCN issued by the SIIB would constitute an 'offence report' for the purpose of Regulation 20(1) of the Regulation.

7.This question has been considered by a learned Single Judge of this Court in A.M.Ahamed & Co. vs. Commissioner of Customs (Imports), Chennai (309 E.L.T. 433) wherein, in very similar circumstances, this Court states as follows:

> '18.The above regulation has only 3 ingredients namely (i) failure to comply with the bond conditions, (ii) failure to comply with the regulations and (iii) a misconduct, for any of which, the licence can be revoked. Since the above regulation does not use the expression "offence report" we have to presume that a report indicating the availability of any one of the above 3 ingredients should be construed as an offence report. Consequently, the date of knowledge gained by the Commissioner, by means of any communication,

be it show cause notice or order-in-original, has to be construed as the date of receipt of the offence report. Otherwise, a report about anyone of the above 3 ingredients can be sent at any time, even after five years or ten years.

19.The Regulations not only fail to prescribe what an offence report is and how it is to be sent, but they do not also prescribe the person competent to send it. In such circumstances, the interpretation sought to be given by the petitioner is more acceptable.'

8.In the present case a comparison of the SCNs issued by the SIIB on the one hand and the respondent on the other makes it very clear that the latter SCN has been issued only based on the information culled by the SIIB; in fact some portions of SCN dated 27.07.2017 appear to have been bodily lifted from the earlier SCN dated 09.05.2017. Thus, clearly it is the SCN issued by the SIIB that forms the information/'offence report' on the basis of which SCN dated 27.07.2017 has been issued. This argument of the petitioner is thus rejected.

9.The second argument concerns the timelines stipulated in Regulation 20(5) which require the Assessing Authority, upon conclusion of the enquiry, to prepare a report of the enquiry and after recording his findings, to submit a report within a period of 90 days from date of issue of notice under Sub-regulation (1). The SCN based on the offence report is dated 27.07.2017; thus the enquiry report ought to have been furnished within 90 days from 27.07.2017 i.e. on or before 27.10.2017; however the enquiry report is dated 02.11.2017, beyond the period stipulated in Regulation 20(5).

10.Courts have consistently taken the view that the timelines set out in the CBLR are not just directory but mandatory and have to be strictly followed/ enforced. Some such decisions are:

(i) Santon Shipping Services vs. The Commissioner of Customs and another (CMA.No.730 of 2016 dated 13.10.2017)

(ii) Commissioner of Customs, Tuticorin vs. MKS Shipping Agencies Pvt. Ltd. (348 E.L.T. 640)

(iii) Sowparnika Shipping Services vs. Commissioner of Customs, Chennai-VIII (352 E.L.T. 286)

(iv) Masterstroke Freight Forwarders P. Ltd. vs. C.C.(1), Chennai-1 (332 E.L.T. 300)

(v) Impexnet Logistic vs. Commissioner of Customs (General) (338 E.L.T. 347)

(vi) Overseas Air Cargo Services vs. Commissioner of Customs (General), New Delhi (340 E.L.T. 119)

(vii) Akshey Gupta vs. Commissioner of Customs (General)

(348 E.L.T. 217)

(viii) Kunal Travels (Cargo) vs. CC(I&G), IGI

Airport, New Delhi (354 E.L.T. 447)

(ix) M/s.Maruvur Arasi Logistics, Pvt. Ltd. vs. The Commissioner of Customs, (Chennai-1) (WP.No.4163 of 2019 dated 27.02.2019)

(x) M/s.KTR Logistics Solutions Pvt. Ltd. Vs. The Commissioner of Customs, Chennai VIII and another (WP.No.3366 of 2019 and batch dated 28.11.2019).

11.In the light of the aforesaid categoric pronouncements to the effect that the timelimits stipulated in Regulation 20 have to be adhered to strictly, the arguments of the petitioner on this score are accepted. The impugned order revoking the licence is set aside and this writ petition, allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

vs

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.8721

W.P.No.2958 of 2018 and
WMP.No.3616 of 2018

JP(CO)
GN(13/02/2020)