

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.04.2021

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.Nos.26231 & 26232 of 2015

and

M.P.Nos.1 & 1 of 2015

M/s.Mars Shipping Services
259, Thambu Chetty Street
3rd Floor, Chennai - 600 001
Rep.by its Partner B.Ravi

...Petitioner in both W.Ps

Vs.

The Commissioner of Customs (VIII)
Custom House, 60, Rajaji Salai,
Chennai - 600 001.

...Respondent in both W.Ps

Prayer in W.P.No.26231 of 2015 : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records connected with impugned order dated 21.7.2015 in F.No.R-591/CHA/ Renewal passed by the respondent herein and to quash the same in so far as the respondent had rejected the petitioners' application dated 22.5.2015 for renewal of their Custom Broker License under Regulation 9(2) of the Customs Broker Licensing Regulations, 2013, in clear violation to the orders passed by this Honourable court in W.P.No.27726 & 27727 of 2014 dated 30.4.2015 directing the respondent herein to permit the petitioner to operate their customs broker licence.

Prayer in W.P.No.26232 of 2015 : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records connected with show cause notice issued under Regulation 20(1) of Customs Broker Licensing Regulations, 2013 dated 21.7.2015 in F.No.R-591/CHA issued by the respondent herein pursuant to the directions of this Honourable court dated 30.4.2015 passed in W.P.No.27726 & 27727 of 2014 quashing the earlier order of the respondent ordering the continued suspension of the CHA license and the consequent show cause notice with liberty to proceed afresh by issuing show cause notice bringing out the alleged failures committed by the petitioner and their misconduct and

to quash the same as the respondent had once again pre-concluded the issue against the petitioner leading to the commission of gross violation to the principles of natural justice apart from not strictly following the directions issued by this Hon'ble Court with all consequential benefits as this Hon'ble Court deem fit and proper in the facts and circumstances of the case and thus render justice.

For Petitioner : Mr.S.Baskaran
[in both W.Ps]

For Respondent : Mr.T.Pramod Kumar Chopda
[in both W.Ps]

COMMON ORDER

The Show Cause Notice issued under Regulation 20(1) of Customs Broker Licensing Regulations dated 21.07.2015 as well as the rejection of application filed by the petitioner for renewal of Customs Broker License in proceedings dated 21.07.2015 are under challenge in these two writ petitions.

2. The fact remains that the petitioner was granted with Customs Broker License under the Licensing Regulations of the year 2013. On account of certain allegations, a show cause notice was issued and the said show cause notice was challenged before this Court in a writ petition and this Court allowed the writ petition and directed the authorities to issue a fresh show cause notice by providing opportunity to the petitioner and take a decision in accordance with law.

3. The learned counsel for the petitioner states that issuance of show cause notice itself is improper and the allegations raised against the petitioners are vague and not in consonance with the provisions of the regulations. Thus, the notice itself is liable to be quashed.

4. The learned counsel appearing on behalf of the respondent objected the said contention by stating that no writ can be entertained against the show cause notice. In respect of other writ petition, the license was not renewed on account of the fact that the proceedings under the petition was pending for adjudication. Thus, there is no reason to consider the writ petitions and both the writ petitions are liable to be dismissed.

5. This Court is of the considered opinion that no writ can be entertained against the show cause notice in a routine manner. Writ against the show cause notice can be entertained by the High Court under Article 226 of the Constitution of India,

only if such show cause notice is issued by an competent authority or an allegation of mala fides are raised against the officer concerned. Even in such case of the allegation of mala fides, the authorities against whom such an allegation is raised, is to be impleaded as party respondent in his personal capacity. In all other circumstances, the Courts are expected to an exercise restraint on entertaining a writ petition against the show cause notice. It is an established principle that on issuance of show cause notice, a person, who received the notice, is expected to submit his explanations / defense and the issues are to be adjudicated on merits and in accordance with law. Contrarily, High Court cannot consider or adjudicate the disputed facts and circumstances, with reference to the documents and evidences to be produced by the respective parties. Such an exercise is beyond the scope of Article 226 of the Constitution of India. Thus, the authorities must be provided with an opportunity to decide the issues on merits and in accordance with law.

6. This being the principles to be followed, this Court is of an opinion that the show cause notice issued against the writ petitioner should reach finality and only after that the petitioner has to exhaust the Appeal Remedy if any and approach the competent Court of Law.

7. This being the factum established, this Court is inclined to pass the following orders:

(1) The petitioner is directed to submit his explanations / defense documents or evidences, if any, in response to the show cause notice dated 21.07.2015 within a period of two weeks from the date of receipt of a copy of this order and on receipt of such explanation / defense from the writ petitioner, the respondent is bound to provide an opportunity and if any request is made for personal hearing, provide the same and thereafter, decide the issues on merits and in accordance with law within a period of four weeks thereafter.

(2) In respect of the rejection order dated 21.07.2015, the petitioner is at liberty to file an appeal as contemplated under the regulations and in the event of filing an appeal, the same shall be decided on merits and in accordance with law by the Appellate Authority.

8. With these directions, both the writ petitions stand disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

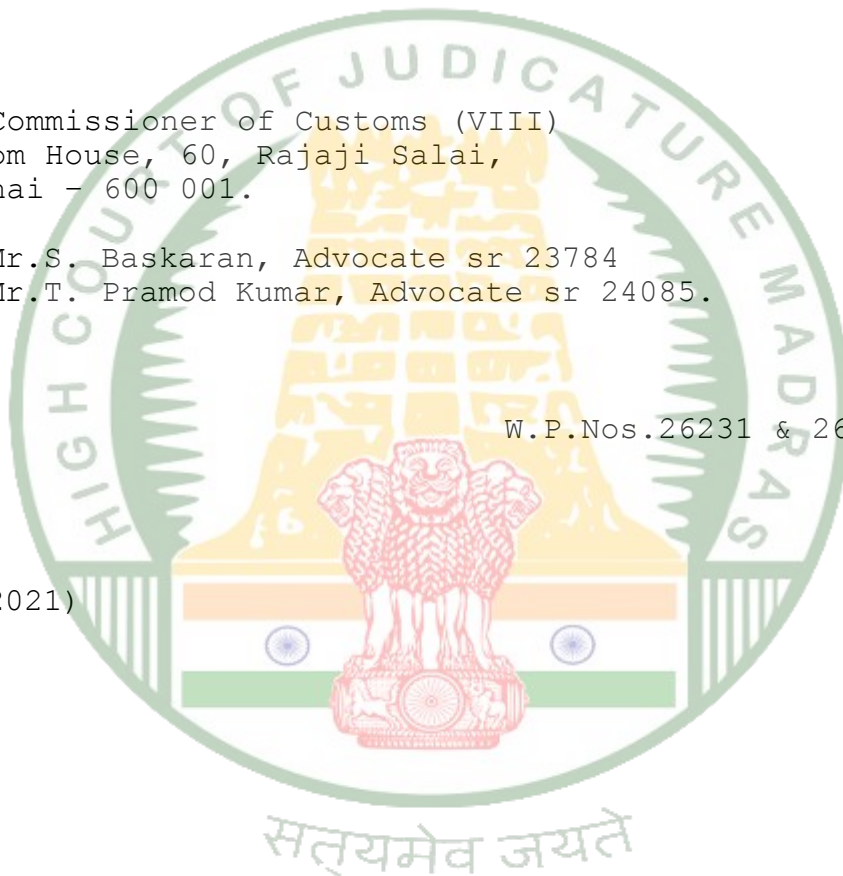
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To

The Commissioner of Customs (VIII)
Custom House, 60, Rajaji Salai,
Chennai - 600 001.

+1 CC to Mr.S. Baskaran, Advocate sr 23784
+1 CC to Mr.T. Pramod Kumar, Advocate sr 24085.

W.P.Nos.26231 & 26232 of 2015

PCH(CO)
SP(18/05/2021)



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