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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.30442 of 2012

and

M.P.No.1 of 2012

M/s.La Freightlift Pvt.Ltd.,
Represented by its
Managing Director,
Mr.A.Venkatesan
32 & 32A, 2nd Cross Street,
V.G.P.Murphy Square Street
St.Thomas Mount
Chennai - 600 016.

...Petitioner

Vs

1.Union of India,
Represented by the Secretary,
Ministry of Shipping, Transport
Bhawan, No.1, Sansad Marg,
New Delhi - 110 001.

2.Director General of Shipping
Jahaz Bhavan
W.H.Marg
Mumbai - 400 001.

3.Deputy Director General of Shipping (MTO)
Jahaz Bhavan,
W.H.Marg,
Mumbai - 400 001.

... Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the notice calling for explanation dated 18.11.2011 made in F.No.MTO-1 (131)/2002 on the file of the 3rd respondent and consequently direct the 3rd respondent to renew the petitioner's MMTO registration bearing Reg.No.MTO/DGS/324/2003 for a further period from 01.04.2012 to 31.03.2015.

For Petitioner : Mr.Rajnish Pathiyil
For M/s.S.Geetha

For Respondents : Mr.S.Diwakar



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ORDER

The writ petition was filed on 8th November 2012, challenging the Show Cause Notice calling for explanation in proceedings dated 18.11.2011.

2. This Court issued Notice of Motion returnable in two weeks and an interim order was passed that "the hearing him go on, but no final order shall be passed" on 09.11.2012.

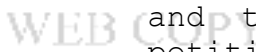
3. Interestingly, the respondents have not filed counter affidavit for the past about 9 years, despite the fact that they are received the interim orders passed by this Court. The conduct of the respondents in not filing the counter affidavit for 9 years stands deprecated and the second respondent/Director General of Shipping is directed to initiate appropriate action against the officials, who all are responsible and accountable for not filing the counter affidavit in the present writ petition.

4. In view of the fact that the writ petition is filed, challenging the Show Cause Notice and during the pendency of the writ petition, the license granted in favour of the writ petitioner expired in the year 2015 and thereafter, it was extended thrice in favour of the petitioner, this Court thought fit to hear the prima facie case for entertaining the writ petition against the Show Cause Notice.

5. The learned counsel for the petitioner strenuously contended that under Section 5 (1) (a) of the Multi-modal Transportation of Goods Act, the Show Cause Notice may be issued to cancel the certificate of registration only on certain circumstances and based on certain allegations. However, in the present case, absolutely no allegation against the petitioner, warranting a Show Cause Notice and this apart, the petitioner also has submitted an interim explanation, setting out the facts and circumstances including the ground regarding Limitation under Section 24 of the Act.

6. The grievances of the writ petitioner is that without considering any of these factors, the respondents have proceeded with the action and thus, the petitioner is constrained to move the present writ petition.

7. The learned counsel for the writ petitioner relied on the averments set out in Paragraph 11 of the affidavit filed in support of the writ petition, wherein the petitioner has stated that they had sent a detailed reply on 16.0.4.2009, wherein they had set out the actual position and submitted that they had not committed any breach of contract in delivery of the consignment and that the impugned delivery was effected pursuant to



8. In view of the explanation submitted in this regard, the competent authority closed the complaint at the first instance and thereafter, reopened for the reasons not known to the petitioner. Under those circumstances, the petitioner again reiterated the said grounds and the actions taken and thereafter, filed the present writ petition.

10. No writ against a Show Cause Notice needs to be entertained in a routine manner by the High Court under Article 226 of the Constitution of India. A writ against a Show Cause Notice may be entertained by the High Court only if such Show Cause Notice is issued by an incompetent authority having no jurisdiction, directly hitting the provisions of the Act or an allegation of mala fides are raised. Even in case of raising an allegation of mala fides, the authority against whom, such an allegation has been raised, must be impleaded as a party respondent in the writ proceedings. In all other circumstances, the person, who received Show Cause Notice should avail the opportunity and defend their case by submitting explanations/objections and also the relevant documents, if any. This being the principles to be followed, adjudication of merits would not arise in such writ petitions filed against the Show



Cause Notice.

11. The power of judicial review under Article 226 of the Constitution of India is to scrutinize the processes, through which, a decision is taken in consonance with the provisions of law, but not the decision itself. Thus, High Court is not expected to conduct an elaborate enquiry or adjudication in the matters of disputed facts, wherein examination of documents, evidences including oral evidences are required for the purpose of forming an opinion and arriving a conclusion. In the event of venturing into an adjudication of merits, undoubtedly, there is a possibility of error, omission or commission as such adjudications are made by the High Court merely based on the affidavits filed by the parties as well as the Xerox copies of the documents filed along with the writ petition. Thus, High Court is expected to be cautious in entering into an adjudication on merits in such circumstances, where certain allegations are raised against the parties, which all are to be adjudicated in a prescribed manner, which alone would avoid prejudices to either of the parties.

12. It is needless to state that the authorities competent exercising quasi judicial power under the provisions of the Statute, is expected to adjudicate the merits of the case including the legal grounds raised by the parties including point of limitation, jurisdiction, etc., Therefore, all such grounds raised are to be adjudicated by the competent authorities in the manner known to law.

13. This being the factum established, the petitioner is at liberty to submit a detailed explanation, setting out the facts and circumstances and file all relevant documents, enabling the authorities to consider the case on merits and in accordance with law. In this regard, the petitioner is directed to submit their explanations/objections within a period of four (4) weeks from the date of receipt of a copy of this order and on receipt of such explanation/objections/documents etc., the respondents are directed to proceed with the enquiry and complete the same and pass final orders as expeditiously as possible, preferably within a period of four months from the date of receipt of a copy of this order.

14. With these directions, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar



1.The Secretary,
Union of India,
Ministry of Shipping, Transport
Bhawan, No.1, Sansad Marg,
New Delhi - 110 001.

2. Director General of Shipping
Jahaz Bhavan
W.H.Marg
Mumbai - 400 001.

3. Deputy Director General of Shipping (MTO)
Jahaz Bhavan,
W.H.Marg,
Mumbai - 400 001.

+1cc to Mr.S.Diwakar, Advocate, S.R.No.61310
+1cc to Mr.Rajnish Pathiyil, Advocate, S.R.No.61442

W.P.No.30442 of 2012

AK-II (CO)
SB (08/12/2021)