



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26-08-2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

WP No.23686 of 2016

And

WMP Nos.20277 and 28441 of 2016

M/s.K.B.S.Manian and Bros. (P) Ltd.,
No.2, Jaffer Syrang Lane,
Chennai-600 001 Represented by its
Chairman Shri G.D.Sigamani.

..Petitioner

vs.

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

..Respondent

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records of the respondent in F.No.R-140/CHA dated 15.06.2016, leading to issuance of order in original No.47779/2016, ordering continuation of the suspension of petitioner's Customs Broker Licence No.R-140/CHA, ordered vide order dated 24.05.2016 until further orders and quash the same as it is without jurisdiction, contrary to law and the mandate of the Customs Brokers Licensing Regulations, 2013.

For Petitioner : Mr.A.K.Jayaraj

For Respondent : Ms.Hema Murali Krishnan,
Senior Standing Counsel.

O R D E R

The order in original dated 15.06.2016, passed by the respondent, is under challenge in the present writ petition.

2. The petitioner is a Private Limited Company, which has



been favoured with the Customs Broker Licence No.R-140/CHA, issued by the respondent, which is valid upto to 22.09.2024.

3. On account of certain serious allegations, proceedings were initiated against the writ petitioner and an order of suspension of license was issued under Rule 19 (1) of the Customs Brokers Licensing Regulations 2013.

4. The point, in nutshell, raised by the respondent is that the order of suspension was issued in the year 2016 and more specifically, after lapse of 7 months from the date of inspection conducted and therefore, the initial order of suspension itself was issued belatedly and thus the order impugned is to be set aside.

5. The learned counsel for the petitioner, relying on Rule 19(1) of the Customs Brokers Licensing Regulations 2013, contended that suspension is only an interim measure and cannot be continued for a longer period and more-so, the petitioner is continuously enjoying the license during the pendency of the writ petition pursuant to the interim stay granted by this Court.

6. The learned Senior Standing Counsel, appearing on behalf of the respondent, objected the said contentions of the learned counsel for the petitioner, by stating that the order of suspension was passed without any delay and on collection of materials. Under Rule 19 of the Customs Brokers Licensing Regulations 2013, the Authority Competent is empowered to pass an order of interim suspension and its continuance under Sub-Rule (2) of Rule 19 of the Customs Brokers Licensing Regulations 2013. Thus, there is no infirmity as such and therefore, the writ petition is to be rejected.

7. Rule 19 of the Customs Brokers Licensing Regulations 2013, stipulates suspension of licence. The Commissioner of Customs may, in appropriate cases where immediate action is necessary, suspend the licence of a Customs Broker where an enquiry against such agent is pending or contemplated. Therefore, it is unambiguous that even on contemplation of charges, the interim order of suspension may be passed by the Commissioner in a case where an enquiry is pending, then also the power may be exercised by the Commissioner. After passing an order of interim suspension under Rule 19(1) of the Customs Brokers Licensing Regulations 2013, the Commissioner shall, within 15 days from the date of suspension, give an opportunity of hearing to the Customs Broker, whose licence is suspended and will pass such orders as he deems fit either revoking the suspension or continuing it, as the case may be, within 15 days from the date of hearing granted to the Customs Broker. Thus, even in cases where suspension order is issued on contemplation



of charges or during the pending enquiry, the Commissioner has to follow the procedures contemplated under Sub-Rule (2) to Rule 19 of the Customs Broker Licensing Regulations 2013.

8. In the present case, such an opportunity was provided and the suspension was continued in the impugned proceedings dated 15.06.2016. However, the proceedings initiated based on the allegations are yet to be concluded. The petitioner filed the present writ petition and by virtue of the interim order granted, the licence is allowed to be continued by the respondent.

9. This Court is of the considered opinion that suspension can never be construed as a punishment. In such cases where on contemplation of charges or during pendency of enquiry, such suspension orders are issued. Suspension is an interim measure only for the purpose of keeping the Customs Broker away from the business transactions to protect the interest of the Customs area. Thus, interim suspension cannot be allowed to continue for a longer period nor the authority on initiation of proceedings are expected to conclude the proceedings by following the procedures as contemplated under Regulation 20 as expeditiously as possible, both in the interest of the Department as well as in the interest of the Customs Broker concerned.

10. Undoubtedly, prolonged suspension of license is also bad in law. Such prolonged suspension would not serve the purpose for which the power of interim suspension is contemplated under the Regulations. The very object of interim suspension is to ensure that the operations of such Customs Broker are stopped forthwith on receipt of such allegations or materials. Thus, this Court is of an opinion that the necessity of suspension and its continuance are to be considered by the Commissioner with reference to the facts and circumstances established.

11. As far as the present writ petition is concerned, the impugned order was passed on 15.06.2016 and five years have lapsed and further the petitioner is enjoying the broker licence during the pendency of the writ petition.

12. This being the factum, the respondent is directed to proceed with the enquiry already initiated against the writ petitioner and conclude the same within a period of six months from the date of receipt of a copy of this order by following the procedures as contemplated under the Customs Brokers Licensing Regulations 2013. Till such time, the final orders are passed by the Competent Authority, the order of suspension, which is impugned in the present writ petition, dated 15.06.2016, is kept in abeyance.



13. With the above directions, the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

Svn

To

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

+1cc to M/s.A.K.Jayaraj, Advocate, S.R.No.43501
+1cc to M/s.Hema Muralikrishnan, Senior Standing Counsel
S.R.No.43250

WP.NO.23686 of 2016

JP-II(CO)
RGA(17/09/2021)