



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.06.2021

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.29141 & 38198 of 2016

and

W.M.P.Nos.25181, 32748 & 32749 of 2016, W.M.P.749/2017

W.P.No.29141 of 2016

M/s.PL Shipping & Logistics Ltd.,
(formerly Pierce Leslie Agencies Ltd.,)
No.37, Dr.P.V.Churian Crescent,
Egmore, Chennai - 600 008,
Represented by its Authorised
Signatory Shri S.Shekar

..Petitioner

vs

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

..Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for records of F.No.CHN/R-701/CHA dated 08.08.2016, leading to an Order of Suspension of the Operation of Customs Broker's Licence under the provisions of Regulation 19 of the Custom Broker Licensing Regulations 2013 and quash the same as it is without jurisdiction, contrary to law and the mandate of the Customs Broker's Licensing Regulations, 2013.

W.P.No.38198 of 2016

M/s.PL Shipping & Logistics Ltd.,
(formerly Pierce Leslie Agencies Ltd.,)
No.37, Dr.P.V.Churian Crescent,
Egmore, Chennai - 600 008,
Represented by its Authorised
Signatory Shri S.Shekar

..Petitioner

vs

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



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2.The Assistant Commissioner of Customs
(Inquiry Officer), Room No.313, 3rd
Floor, Narmada Block, Custom House,
No.60, Rajaji Salai, Chennai - 600 001.

3.The Assistant Commissioner of Customs
(CBS) Custom House, No.60, Rajaji
Salai, Chennai - 600 001.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of F.No.CHN/R-701/CHA, leading to issuance of Show cause notice under Regulation 20 of Customs Broker Licensing Regulations, 2013, dated 28.09.2016, as the same is contrary to law and the provisions of the Custom Broker Licensing Regulations (CBLR), 2013 and further, direct to the 1st respondent to renew the validity of the Licence for a period of 10 years mandated under the Customs Broker's Licensing Regulations, 2013, as the Order of Suspension of the petitioners Customs Broker's Licence was stayed by this Hon'ble Court vide Order in W.P.No.29141/2016 dated 29.08.2016.

For Petitioner : Mr.B.Sathish Sundar
[in both W.Ps]

For Respondents: Mr.A.P.Srinivas
Senior Panel counsel
[in both W.Ps]

COMMON ORDER

Both these writ petitions are filed by M/s.PL Shipping and Logistics Limited. The first Writ Petition in W.P.No.29141 of 2016 is filed, challenging the order of interim suspension of the operation of Customs Broker's License issued in proceedings dated 08.08.2016. The second Writ Petition in W.P.No.38198 of 2016 is filed, challenging the Show Cause Notice issued in proceedings dated 28.09.2016.

2. Pursuant to the interim order granted against the order of interim suspension, the petitioner is continuing his operations in the respective Ports. Under these circumstances, both the writ petitions were taken together for passing a common order.

3. The writ petitioner is a Public Limited Company, has been favoured with Customs Broker's License issued by the respondent. The petitioners operate as Customs Brokers at the Port of



Chennai, Kochi, Coimbatore, Tuticorin and Mangalore, by extension of their Customs Brokers Licence under intimation in Form C of the Custom Broker Licensing Regulations, 2013 [hereinafter referred to as 'Regulations']. The facts regarding the operation of the petitioner in the Ports mentioned above are not disputed by the respondents. Thus, those facts narrated deserves no further consideration and the issue raised in these writ petitions are that the issuance of order of interim suspension and the Show Cause Notice is well within the provisions of the Customs Broker Licensing Regulations or not.

4. The learned counsel for the petitioner made a submission that the initiation of action against the petitioner is beyond the time limit prescribed under the Regulation and therefore, the interim suspension as well as the Show Cause Notice issued after a lapse of 90 days is unsustainable and liable to be set aside. To substantiate the same, the learned counsel for the petitioner contended that the offence report was of the year 2015 and the Show Cause Notice was issued on 16.09.2015 and therefore, the interim order of suspension as well as the impugned Show Cause Notice issued in the year 2016 after a lapse of the prescribed time limit cannot be sustained at all.

5. The learned counsel for the petitioner relied on the judgment in the case of A.M.Ahamed & Co., Vs. Commissioner, reported in 2014 (309) E.L.T.433 (Mad). In the said judgment, it is held that adherence of time limits contemplated under the regulations are mandatory and in the event of not initiating action within the time limit prescribed, the actions are liable to be set aside. It is contended that the said judgment was taken by way of an appeal and the Hon'ble Division Bench has also confirmed the judgment and therefore, the proposition became final in this regard.

6. The learned counsel for the petitioner relied on the other judgments on the same line and more specifically, in the case of Sabin Logistics Private Limited Vs. Commissioner of Customs, Chennai-VIII, reported in 2019 (367) E.L.T. 200 (Mad), wherein this Court held as follows:

"19. In the case of MKS Shipping Agencies (supra), a Division Bench of this Court hearing a writ appeal filed by the Commissioner of Customs Duty, Tuticorin challenging an order of the learned Single Judge concluding that the time lines set out in Regulations 19 and 20 were mandatory and sacrosanct, dismissed the appeal holding that there was no irregularity in the conclusion of learned Single Judge. At paragraph no. 9 the Division Bench states thus:

'9. Insofar as the submission of the learned Counsel for the appellant that since the impugned



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notice is a show cause notice, it cannot be challenged by filing a Writ Petition and remedy open to the respondent/Writ Petitioner is to submit his response and in the event of any adverse order, he can file an appeal before CESTAT Act, the said submission lacks merits and substance for the reason that admittedly, the impugned show cause notice has been issued beyond the period of ninety days from the receipt of offence report and since the relevant statutory regulation as well as Circular issued by them had been violated with impunity, the respondent/Writ Petitioner need not be driven to avail the alternative remedy. In this context, it is useful to refer to the decision of the judgment reported in (2004) 7 SCC 166, S.J.S. Busniess Enterprises (P) Ltd. v. State of Bihar, wherein, it has been held as follows:-

"Assuming that the explanation given by the appellant that the suit had been filed by one of the Directors of the Company without the knowledge of the Director who almost simultaneously approached the High Court under Article 226 is unbelievable, the question still remains whether the filing of the suit can be said to be a fact material to the disposal of the writ petition on merits. We think not. The existence of an adequate or suitable alternative remedy available to a litigant is merely a factor which a Court entertaining an application under Article 226 will consider for exercising the discretion to issue a writ under Article 226. But the existence of such remedy does not impinge upon the jurisdiction of the High Court to deal with the matter itself if it is in a position to do so on the basis of the affidavits filed. If however a party has already availed of the alternative remedy while invoking the jurisdiction under Article 226 it would not be appropriate for the Court to entertain the writ petition. The Rule is based on public policy but the motivating factor is the existence of a parallel jurisdiction in another Court. But this Court has also held in Chandra Bhan Gosain Bhan v. State of Orissa that even when an alternative remedy has been availed of by a party but not pursued that the party could prosecute proceedings under Article 226 for the same relief. This Court has also held that that when a party has already moved the High Court under Article 226 and failed to obtain relief and then moved an application under Article 32 before this Court for the same relief, normally the Court will not entertain the application under Article 32. But where in the parallel jurisdiction, the order is not a speaking one or the



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matter has been disposed of on some other ground, this Court has, in a suitable case, entertained the application under Article 32. Instead of dismissing the writ petition on the ground that the alternative remedy had been availed of, the Court may call upon the party to elect whether it will proceed with the alternative remedy or with the application under Article 226. Therefore the fact that a suit had already been filed by the appellant was not such a fact the suppression of which could have affected the final disposal of the writ petition on merits.

9. The learned Judge, on facts of the case has categorically found that despite an offence report dated 29.08.2012, the appellant fails to issue the notice within the time prescribed under the Customs House Agents Licensing Regulations 2004. It is also pertinent to point out at this juncture that the interim order of suspension passed against the respondent/Writ Petitioner by invoking Regulation 20(2) of the Customs House Agents Licensing Regulations 2004 has nothing to do with the Regulation 22(1) of the Customs House Agents Licensing Regulations 2004 as both are independent to each other and therefore, the pendency of the legal proceedings pertain to the interim suspension cannot operate as any impediment for the appellant to issue the notice within the time prescribed under the Customs House Agents Licensing Regulations 2004 and as such, the belated issuance of the show cause notice, after the receipt of the offence report dated 29.08.2012, on the face of, is unsustainable. The learned Judge has rightly taken note of the said aspect and reached the conclusion to allow the Writ Petition.'

20. *Santon Shipping Services v. Commissioner of Customs, Tuticorin* in CMA No. 730/2016 and CMP. No. 5921/2016 dated 13.10.2017, a Division Bench of this High Court held thus:

'41. In view of the aforesaid judgments, in our opinion, the issue as to whether the limitation prescribed i.e. 90 days period under Regulation 22(1) of CHALR 2004, is mandatory or not, is no more res integra.

42. Once the limitation prescribed is mandatory, as has been declared by the Courts of law, it cannot be stated that, because of the other issues that is the merit of the case, this mandatory requirement of the limitation can be ignored.



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43. It is not the case of the 1st respondent that the 90 days limitation contemplated under Regulation 22 (1), is directory. It is also not the case of the 1st respondent that the show cause notice was issued within the limitation period of 90 days from the date of offence report.

44. Since the offence report was dated 22.09.2010 and the show cause notice, admittedly, was issued only on 18.11.2011, there can be no doubt that the said show cause notice was issued well beyond the period of limitation of 90 days.

45. Whatever be the claim and counter claim on the merits, in this appeal can, in our view, they get shadowed by the failure on the part of the revenue in not acting in time, by issuing the show cause notice, within the period as contemplated under Regulation 22 (1) of CHALR, 2004.

46. Therefore, we are of the considered view, and in fact have no hesitation to hold so that, the Revenue has not issued and the show cause notice dated 18.11.2011 within the period of limitation prescribed under Regulation 22 (1) CHALR, 2004 and thus, the consequent proceedings involving revocation of the appellant's CHALR licence and forfeiture of its security deposit, is unlawful.'

7. The other cases cited in Kalki Shipping Associates -VIII vs. Commissioner of Customs, Chennai, reported in 2019 (368) E.L.T. 319 (Mad) and KTR Logistics Solutions Private Limited Vs. Commissioner of Customs, Chennai, reported in 2020 (371) E.L.T. 685 (Mad), the issues are decided and the proposition laid down regarding the adherence of time limit as per the regulations are confirmed by various Benches of this Court and by the Hon'ble Division Bench and therefore, the present writ petition is to be allowed on the ground that the impugned orders in both the writ petitions were issued beyond the period of limitation as contemplated under the Regulations.

8. The learned Senior Panel counsel appearing on behalf of the respondents have not disputed the time limit prescribed in the regulations and the judgments holding that the time limits are to be followed strictly. However, it is brought to the notice of this Court that the respondent / Department has filed Review Petition on the issue that the regulations are only directory and not mandatory. The learned Senior Panel counsel is of an opinion that the Hon'ble Supreme Court, in number of cases, reiterated that time limits prescribed in certain regulations are only directory and cannot be held as mandatory



and the proceedings need not be quashed merely on the ground of delay in following such time limits. On this line, the Department filed Review Petition and the same is pending. However, this Court is of an opinion that those Review Petitions or otherwise have no bearing on the present writ petitions as the facts are distinguished by the respondent in the present cases.

9. The learned Senior Panel counsel made a submission that even presuming that the time limits are to be adhered strictly, the present cases have not fallen beyond the period of limitation as contemplated and therefore, the facts are relevant for the purpose of deciding these writ petitions. The judgment cited by the petitioners are not applicable with reference to the facts and circumstances of these writ petitions.

10. In order to substantiate the said contentions, the learned Senior Panel counsel solicited the attention of this Court with reference to the summons issued by the Superintendent of Customs, Customs House, New Harbour Estate, Tuticorin, in proceedings dated 28.04.2015. The said Summon was issued under Section 108 of the Customs Act, 1962. It is contended that the petitioner is operating in various Ports, but the License Issuing Authority is the Commissioner of Customs, Chennai. Therefore, the Licensing Authority is competent to issue an order of interim suspension, show cause notice and proceed with the enquiry by following the regulations. In the present case, the initial summon was issued by the Superintendent of Customs at Tuticorin and the said proceedings were not communicated to the License Issuing Authority as it is not necessary to do so. In view of the fact that the offence was committed in Tuticorin Port, the competent authority of the Tuticorin Port initiated actions and issued summons. The authority at Tuticorin issued Show Cause Notice in proceedings dated 16.09.2015, setting out allegations against the petitioner. Reliance is placed on the documents for issuance of show cause notice. It is categorically stated, why penalty should be imposed on the petitioners under Section 114(i) read with Section 117 of the Customs Act, 1962.

11. Perusal of the said show cause notice reveals that the copy of the same has not been communicated to the License Issuing Authority namely, the Commissioner of Customs at Chennai. The show cause notice was issued to the petitioners. Thereafter, the order in original was passed by the competent authority at Tuticorin Port in proceedings dated 22.03.2016. The said final order in proceedings were issued and the said order was communicated to the Commissioner of Customs, Chennai, which was received by the License Issuing Authority on 01.07.2016.



12. In this regard, the counter affidavit filed on behalf of the respondents states that the offence report of the intimation letter no.C.No.VIII/13/59/2007-ChAL dated 08.06.2016, enclosing copy of the Order-in-Original no.45/2016 dated 22.03.2016 passed by the Joint Commissioner of Customs, Tuticorin, was forwarded to the Commissioner of Customs, Chennai (License Issuing Authority) on 01.07.2016 to initiate action against the said Customs Broker / petitioner.

13. Relying on the said intimation letter, the learned counsel for the respondents reiterated that the first respondent / License Issuing Authority received the offence report only on 01.07.2016 and therefore, the time limit should be reckoned with effect from 01.07.2016.

14. In the present case, the offence was committed by the petitioners in Tuticorin Port and the competent authorities in Tuticorin Port initiated action by issuing show cause notice, conducted an enquiry and passed an order in original dated 22.03.2016 and the said order in original, imposing penalty was communicated to the License Issuing Authority through their letter dated 08.06.2016 and the said letter was received by the License Issuing Authority on 01.07.2016 and therefore, the time limit as contemplated in the regulation is to be reckoned from 01.07.2016.

15. The date of acknowledgement of the offence report is relevant date to be considered for the purpose of initiation of action for revocation of license by following the procedures contemplated under the Customs Brokers Licensing Regulations. In the present case, the show cause notice issued on 16.09.2015 and the order in original, imposing penalty issued on 22.03.2016, and therefore, the license issuing authority was nothing to do with that proceedings. Only when the penalty imposed was communicated to the License Issuing Authority at Chennai, they are empowered to institute action under the provisions of the Customs Brokers Licensing Regulations.

16. In the present case, admittedly, the interim order of suspension was issued on 08.08.2016 under Regulation 19. Immediately, the petitioner approached the Hon'ble High Court by filing W.P.No.29141 of 2016 and an interim order was granted and pursuant to the interim order, he is continuing the operations. During the pendency of the said writ petition, the competent authority issued show cause notice in proceedings dated 28.09.2016 and challenging the said show cause notice, subsequent writ petition was filed in W.P.No.38198 of 2016.



17. Carefully considering the relevant dates and the receipt of offence report by the first respondent / License Issuing Authority, this Court is of an opinion that the period of limitation for initiation of action under the regulation is to be reckoned from 01.07.2016, the date on which the offence report had been received by the License Issuing Authority / the Commissioner of Customs, Chennai. This being the factum, the impugned interim suspension order was issued on 08.08.2016 and the impugned show cause notice was issued on 28.09.2016. These proceedings were instituted within a period of 90 days. Thus, the orders cannot be said to be violative by the time limit prescribed under the Regulations.

18. This Court is of the considered opinion that normally a writ against a show cause notice is not entertainable. As far as the interim order of suspension is concerned, the writ petitioner is continuing its operation for about 4 ½ years and therefore, the interim order of suspension lost its relevance. Thus, the interim order of suspension need not be restored and the respondents are permitted to continue the proceedings based on the show cause notice issued on 28.09.2016 and take a decision and pass final orders.

19. As far as the judgment cited by the petitioner in the case of A.M.Ahamed & Co., Vs. Commissioner (cited supra) is concerned, it is categorically clarified in Paragraphs 19 and 20 as follows:

"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.

20. The time limit prescribed in Regulation 22(1) has to be understood in the context of the strict time schedule prescribed in various portions of the Regulations. Regulation 20(2), for instance, entitles the Commissioner, to suspend the licence of an agent, in appropriate cases where immediate action is necessary. Regulation 22(3) prescribes a time limit of 15 days. Regulation 22(1) prescribes a time limit within which action is to be initiated. It also prescribes the time limit under Regulation 22(5). Therefore, considering the fact that the whole proceedings are to be commenced within a time limit and also concluded within a time frame, I am of the view that the show cause notice issued to the petitioner on 08.05.2010 with a copy marked to the first Respondent should be taken as the date of receipt of the offence report. Consequently, the period of 90 days should



commence only from that date. If so calculated, the impugned proceedings have obviously been initiated beyond the period of 90 days."

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20. Perusal of the findings in the above judgment, it is unambiguous that there is no definition for an offence report. Thus, in the present case, the order of punishment by the competent authorities at Tuticorin Port, which was communicated through intimation letter to the License Issuing Authority is to be construed as an offence report for the purpose of initiation of action under the Regulations. It is needless to state that unless an offence report is served to the License Issuing Authority, it may not be possible for initiation of further action. As rightly pointed out by the learned Senior Panel counsel that the License Issuing Authority may not have knowledge about each and every actions initiated by the competent authorities of various Ports. The petitioner is having operations in number of Ports across the country. Therefore, the communication of offence report by the authorities of a particular Port to the License Issuing Authority is an important factor for the purpose of deciding the limitation for initiation of action under the Regulations. Thus, the principles laid down in the case of A.M.Ahamed & Co., Vs. Commissioner (cited supra) is crystal clear that the receipt of offence report by the License Issuing Authority would be relevant for the purpose of initiation of action against the Customs Brokers License by invoking the provisions of the Regulation.

21. This Court is of the considered opinion that a writ against the show cause notice in this case is filed mainly on the ground that it is issued beyond the period of limitation and the respondents have no competency to issue show cause notice. As the respondents could able to establish factually that the offence report was communicated to the License Issuing Authority on 01.07.2016, the action initiated by issuing interim suspension order and show cause notice dated 28.09.2016 are well within the period of limitation as contemplated under the Regulations and there is no infirmity as such. However, the interim order of suspension issued need not be given effect to as the petitioner is operating continuously for about 4 ½ years, after the issuance of interim suspension order. But in respect of the impugned show cause notice, the petitioner is at liberty to submit their explanations along with the relevant documents and evidences and participate in the process of enquiry. The respondents are directed to proceed with the enquiry by affording opportunity to the writ petitioner as expeditiously as possible and dispose of the enquiry proceedings preferably within a period of six months from the date of receipt of a copy of this order. The petitioner is at liberty to raise all the



grounds both factually and legally before the authorities competent.

22. With these directions, both the writ petitions stand disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar

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Sub-Assistant Registrar

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To

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

2.The Assistant Commissioner of Customs
(Inquiry Officer), Room No.313, 3rd
Floor, Narmada Block, Custom House,
No.60, Rajaji Salai, Chennai - 600 001.

3. The Assistant Commissioner of Customs
(CBS) Custom House, No.60, Rajaji
Salai, Chennai - 600 001.

+1 CC to Mr. Sathish Sundar, Advocate sr 28288
+1 CC to Mr.A.P. Srinivas, Advocate sr 28228.

W.P.Nos.29141 & 38198 of 2016

VSNI (CO)
SP(23/07/2021)