IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

WP.No.14790 of 2021
and
WMP.No.15674 of 2021

[Video Conferencing]

M/s.Vimal Freight International,
Rep by its Partner Mr.R.V.Balasubramaniam,
No.36, Angappa Naicken Street,
A.M.Towers, Mannady,
Chennai - 600 001.

At Present :- No.5/29, Bharathi Salai,
Ramapuram,
Chennai - 600 089. ....Petitioner

-Vs.-

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

2. The Inquiry Officer ,
   Assistant Commissioner of Customs,
   Chennai - III Commissionerate,
   No.60, Rajaji Salai, Custom House,
   Chennai - 600 001. .....Respondents

Prayer :-

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the entire records of the 1st respondent herein leading to the issuance of the impugned show cause notice under Regulation 17 (1) of CBLR 2018, dated 01.06.2021, issued in F.No.R-225/CBS (CASE FILE-II), DIN No.20210673MY000000D811, by the 1st respondent and quash the same as illegal, arbitrary, unfair and without jurisdiction.

For Petitioner : Mr.A.K.Jayaraj
For Respondents : Ms.K.G.Usha Rani,
Standing Counsel

ORDER

The petitioner has challenged the impugned show cause dated 01.06.2021 issued under Regulation 17(1) of the Customs Brokers Licensing Regulations, 2018. The petitioner has challenged the impugned show cause notice primarily on the ground that the impugned show cause notice dated 01.06.2021 is time barred in terms of Regulation 17(1) of the aforesaid regulation, as per which the Principal Commissioner of Customs has to issue the notice in writing to Custom Brokers within a period of 90 days from the date of receipt of the offence report stating the grounds on which it is proposed to revoke the license.

2.The learned counsel for the petitioner submits that there is no dispute that the offence report was received by the respondent on 18.12.2020 and therefore, the impugned show cause notice was beyond the period of 90 days time limit prescribed under Regulation 17(1) of the aforesaid regulation.

3.The learned counsel for the petitioner has placed reliance on the decision of the Division Bench of this Court, dated 13.10.2017, rendered in the case of Santon Shipping Services v. The Commissioner of Customs and Another in CMA.No.730 of 2016. It is submitted that though the said order was rendered in the context of Regulation 20 of Custom House Agent Licensing Regulations, 2004 (hereinafter referred to as, 'CHALR') the ratio of the said decision would apply to the facts of the present case as well, as both the provisions viz., Regulation 22 of 2004 and Regulation 17(1) of 2018 regulations are para materia.

4.The learned counsel for the petitioner has also placed reliance on the decision of this Court again in the context of 2013 Regulation in W.P.No.38433 and 38434 of 2015, vide order dated 03.01.2020. In this connection, reference has been made to Paragraphs 7, 8 and 9 which reads as follows:

> “7.I have considered the arguments of the learned counsel for the petitioner and the respondents. The issue is squarely covered by the above decision of this Court cited by the learned counsel for the petitioner. Therefore, the impugned notice dated 07.07.2015 (impugned in W.P.NO.38434 of 2015) is liable to be quashed.
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> 8.As far as the impugned order dated 9.6.2015, (impugned in W.P.No.38433 of 2015) to suspend the petitioner's Customs Brokers License is concerned and its subsequent extension though in terms of Regulation 19, nevertheless is liable to be quashed at this point

of time as the impugned notice dated 07.07.2015 is being quashed as being issued beyond the period of limitation. Therefore, there is no justification keeping the petitioner's lilcense suspended any longer. Therefore, impugned order dated 09.06.2015 (impugned in W.P.No.38433 of 2015) is also quashed.

9.In the light of the above discussion, both the writ petitions are allowed with consequential relief to the petitioner. Consequently, connected miscellaneous petitions are closed. No costs.”

The learned counsel for the petitioner therefore submits that the impugned show cause notice is time barred and without jurisdiction and therefore, it is liable to be quashed as prayed for.

5.The learned standing counsel for the respondents would submit that even though the investigation report is dated 10.12.2020, the report did not accompany the Relied Upon Documents (RUDs) and the Relied Upon Documents (RUDs) were furnished to the office of the respondent only during the month of May 2021 vide letter dated 21.05.2021 and therefore, submits that mere communication of the offence report earlier cannot be construed as communication of the offence report for the purpose of computation of limitation under Regulation 17(1) of Customs Brokers Licensing Regulation, 2018. Specific reference was made to Paragraphs 4 and 5 in the counter which reads as follows:

“4. With regard to Ground nos.(a), (b) & (c) of the writ petition, it is submitted that the Investigation Report dated 10.12.2020 received from the Investigation Authority i.e. Special Intelligence & Investigation Branch (SIIB), Chennai - III Customs Commissionerate, vide letter F.No.S.Misc.186/2020-SIIB. On scrutiny of the Investigation Report it was found that the Relied Upon Documents (RUDs) mentioned in the said Investigation Report were not enclosed/attached. Therefore, a letter vide F.No.S.Misc.13/2020-CBS dated 18.12.2020 and 23.03.2021 sent to the Dy.Commissioner of Customs, SIIB, Chennai-III Commissionerate, requesting to forward the RUDs for initiation of action against the petitioner.

5. On 21.05.2021, the Deputy Commissioner of Customs, SIIB vide letter F.No.S.Misc.186/2020-SIIB forwarded the RUDs pertaining to Investigation Report dated 10.12.2020 in respect of M/s.Akshaya Enterprises. An Investigation Report without RUDs cannot be considered as a complete Report. Therefore, the RUDs are

very much necessary before initiation of any action. In view of the above, it is submitted that the date of receipt of offence/investigation report has been taken as 21.05.2021 and the subject Show Cause Notice dated 01.06.2021 issued by the Pr.Commissioner of Customs, Chennai-VIII, is legal and passed under his jurisdiction within the time limit of 90 days prescribed under Regulation 17 of CBLR, 2018."

Therefore, the learned standing counsel for the respondents would submit that the writ petition is devoid of merits and the petitioner should be asked to file appropriate reply to the show cause notice and participate in the proceedings initiated by the first respondent.

6.I have considered the arguments of the learned counsel for the petitioner and the learned standing counsel for the respondents.

7.I have also perused the order passed by this Court in Santon Shipping Services v. The Commissioner of Customs and Another referred to supra in CMA.No.730 of 2016. The Division Bench of this Court in an appeal against the order of Customs, Excise and Service Tax Appellate Tribunal. It considered the scope of Regulation 22 of CHALR, 2004.

8.Similarly in W.P.No.38433 and 38434 of 2015 vide order dated 03.01.2020, this Court had an occasion to consider the Customs Brokers Licensing Regulation, 2013, in particular Regulation 20. Another order also has been passed by this Court in W.P.(MD).No.1064 of 2013 vide order dated 22.10.2019 under the context of 2004 Regulation. It was considered by the Division Bench in CMA.No.730 of 2016.

9.The point for determination in the present Writ Petition is whether the respondents are justified in issuing the impugned show cause notice dated 01.06.2021 pursuant to the investigation report dated 10.12.2020. As per Regulation 17(1) of the 2017 Regulation, a notice has to be issued within 90 days from the date of receipt of offence report to a custom broker. The scheme of Regulation in the year 2018, as also in the year 2013 and also in the year 2004 is similar. The proceedings have to be initiated within a period of 90 days from the date of receipt of the offence report. The expression "Offence Report" has also been defined in explanation to Regulation 17 and it reads as under:

"17. Procedure for revoking license or imposing penalty.-

(1). .....

(2). .....
.....
.....
.....
(9). .....

Explanation.- Offence report for the purposes of this regulation means a summary of investigation and prima facie framing of charges into the allegation of acts of commission or omission of the Customs Broker or a F card holder or a G card holder, as the case may be, under these regulations thereunder which would render him unfit to transact business under these regulations.”

10.The argument putforth on behalf of the respondents that the Relied Upon Documents (RUDs) were furnished to the department only on 24.05.2021 by the second respondent cannot be countenanced. The said letter even if received on 31.05.2021 by the office of the Deputy Commissioner of Customs makes it clear that the impugned show cause notice dated 01.06.2021 has been issued beyond 90 days from the date of the offence report. Delay, if any is on the part of the office of the second respondent in forwarding the Relied Upon Documents (RUDs) which has been referred to in the impugned show cause notice. The said delay is not curable. Further, show cause notice is to be issued based on the offence report which is a mere summary of investigation and prima facie framing of charges into the allegation of acts of commission or omission of a Customs Broker or a F card holder or a G card holder under the regulation which would render such a broker unfit to transact business under these regulations. The investigation report/offence report has been filed in detail and therefore, there is no excuse for delay in issuing the show cause notice.

11.The decision of the Division Bench in Santon Shipping Services v. The Commissioner of Customs and Another referred to supra made in CMA.No.730 of 2016 vide order dated 13.10.2017 which deals with Regulation 22 of CHALR 2004 squarely applies to the facts and circumstance of the present case. Though the language in Regulation 22 is in slight variance with Regulation 17 of 2018 Regulation, nevertheless both the provisions are clear as far as the period of limitation is concerned. Regulation 22 of CHALR 2004 and Regulation 17 of 2018 regulation are para materia and they read as under :-

Custom House Agent Licensing Regulations, 2004	Custom Brokers Licensing Regulations, 2018

22. Procedure for suspending or revoking license under Regulation 20:- (1).The Commissioner of Customs shall issue a notice in writing to the Customs House Agent within ninety days from the date of receipt of offence report, stating the grounds on which it is proposed to suspend or revoke the licence and requiring the said Customs House Agent to submit within thirty days to the Deputy Commissioner of Customs or Assistant Commissioner of Customs nominated by him, a written statement of dense and also to specify in the said statement whether the Customs House Agent desires to be heard in person by the said Deputy Commissioner of Customs or Assistant Commissioner of Customs. Provided that the procedure prescribed in regulation 22 shall not apply in respect of the provisions contained in sub-regulation (2) to regulation 20.	17. Procedure for revoking license or imposing penalty.- (1).The Principal Commissioner or Commissioner of Customs shall issue a notice in writing to the Customs Broker within a period of ninety days from the date of receipt of an offence report, stating the grounds on which it is proposed to revoke the license or impose penalty requiring the said Customs Broker to submit within thirty days to the Deputy Commissioner of Customs or Assistant Commissioner of Customs nominated by him, a written statement of defense and also to specify in the said statement whether the Customs Broker desires to be heard in person by the Deputy Commissioner of Customs or Assistant Commissioner of Customs.

12.Since the Division Bench of this Court has already concluded under similar circumstances that the delay in initiating the proceedings within the time limit stipulated would be non-est, I am inclined to allow the Writ Petition on the ground that the impugned show cause notice is time barred as admittedly the offence report dated 10.12.2020 was received before 18.12.2020 as is evident from a reading of Paragraph 4 of the Counter Affidavit of the respondent which reads as under:

"4. With regard to Ground nos.(a), (b) & (c) of the writ petition, it is submitted that the Investigation Report dated 10.12.2020 received from the Investigation Authority i.e. Special Intelligence & Investigation Branch (SIIB), Chennai – III Customs Commissionerate, vide letter F.No.S.Misc.186/2020-SIIB. On scrutiny of the Investigation Report, it was found that the Relied Upon Documents (RUDs) mentioned in the said Investigation Report were not enclosed/attached. Therefore, a letter vide F.No.S.Misc.13/2020-CBS dated 18.12.2020 and 23.03.2021 sent to the Dy.Commissioner of Customs, SIIB, Chennai-III Commissionerate, requesting to forward the RUDs for initiation of action against the petitioner."

13.The delay in inter-departmental communications or furnishing of Relied Upon Documents (RUDs) are of no consequences as the impugned show cause notice has been admittedly issued beyond the period of 90 days. It is noticed that the office of the second respondent and the office of the first respondent is located in the same Custom House in Parrys and therefore, there is no excuse for condoning the delay.

14.In view of the aforestated position, the Writ Petition stands allowed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

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

2. The Inquiry Officer ,
   Assistant Commissioner of Customs,
   Chennai - III Commissionerate,
   No.60, Rajaji Salai, Custom House,
   Chennai - 600 001.

+1cc to Ms.K.G.Usha Rani, Advocate, S.R.No.61686
+2ccs to Mr.A.K.Jayaraj, Advocate, S.R.No.61580,61714

W.P.No.14790 of 2021

PMK[co]
NSK 27/12/2021