IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.03.2021

PRONOUNCED ON : 27.05.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.43185 of 2016
and WMP.No.37016 of 2016

M/s.Paragon Logistics,
Rep.by its Partner,
E.Rajendran,
New No.79, Old No.38, 1st Floor,
Angappa Naicken Street,
Chennai 600 001. ... Petitioner

vs

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

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

Prayer : Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiiorari to call for the records pertaining to the impugned show cause notice daated 01.07.2016 in F.No.CGHN/R-671/CHA issued by the 1st respondent and quash the same.

For Petitioner: Mr.G.Derrick Sam

For Respondents: Mr.T.Pramod Kumar Chopda
Senior Standing Counsel

O R D E R

This writ petition has been filed to quash the impugned notice dated 01.07.2016 issued to the petitioner under Regulation 20 of the Customs Brokers Licensing Regulations (CBLR), 2013.

2. The impugned notice has been challenged on the ground that it is contrary to the Regulation 20 of the Customs Brokers Licensing Regulations, 2013.

3. According to the learned counsel for the petitioner, the role of the petitioner in the alleged mis-declaring in description of the imported goods came to the light of the Customs Department and a show cause notice dated 11.09.2012 bearing reference F.No.VIII/48/10/2012-DRI was issued to several persons including the aforesaid authorised representatives in respect of clearance of import goods vide bill of entry No.481515 dated 11.03.2010 was noticed and penalty was imposed on the authorised representative viz., M.Muniasamy, the petitioner vide Order in Original No.43946/2015 dated 30.12.2015. By the said order, the penalty of Rs.2,00,000/- imposed under Section 112 of the Customs Act, 1962 and another penalty of Rs.2,00,000/- was imposed on the petitioner under Section 114 AA of the Customs Act, 1962. The impugned show cause notice is therefore challenged on the two grounds namely, the impugned show cause notice has been issued in respect of alleged offence by DRI for which already a show cause notice dated 11.09.2012 was issued to Maharaja Carbo for the imports made by M/s.Quality Lube Products Private Limited, Chennai vide bill of entry Nos.460967 dated 19.03.2010, 460968 dated 19.03.2010 and 481515 dated 11.03.2010.

4. It is submitted that in the show cause notice itself there was a reference to bill of entry No.481515 dated 11.03.2010 which was processed by the petitioner. It is submitted that long after the said show cause notice was issued and revocation of license of the said Maharaja Carbo vide order in Original No.F.No.R-277/CHA dated 28.05.2014, the impugned show cause notice has been issued to the petitioner on 01.07.2016.

5. It is further submitted that even otherwise, the impugned show cause notice is much after passing of the Order in original No.F.No.CAU/DRI/CHE/41/2012 dated 30.12.2015 and was therefore barred by law.

6. Under such circumstances, the learned counsel for the petitioner drew my attention to the following decisions:

i) Santon Shipping Service vs. The Commissioner of Customs and Ors. C.M.A.No.730 of 2016.

ii) Commissioner of Customs, Tuticorin vs.

MKS Shipping Agencies Pvt.Ltd., 2017(348) E.L.T.640 (Mad.)

iii) Commr.of Cus. (Sea Port Import), Chennai vs. Cestat, Chennai, 2014(310) E.L.T.673 (Mad.)

iv) M/s.Carewell Shipping Pvt.Ltd., Rep.by its Director cum- Chairman, G.R.Seethabathy, Old No.48, Rajajisalai, 3rd Floor, Chennai 600 001, vs.Commissioner of Customs, Chennai VIII

Commissionerate, Custom House, No.60, Rajajisalai, Chennai 600 001 and two others, W.P.Nos.26923 and 26934 of 2018

v) KTR Logistics Solutions Pvt.Ltd, vs. The Commissioner of Customs, Chennai VIII Commissionerate and Ors. Manu/TN/9507/2019

vi) Meticulous Forwarders vs. Commissioner or Customs in W.P.No.26686 of 2015

vii) Necko Freight Forwarders Ltd., vs. Commissioner of Cus. (General), 2018(360) E.L.T.879 (Del.)

viii) Sabin Logistics Pvt.Ltd., vs. Commissioner of Customs, Chennai VIII, 2019(367) E.L.T.200 (Mad.)

7. A specific reference was made to the decision of this Court in Meticulous Forwarders vs. Commissioner or Customs in W.P.No.26686 of 2015 dated 10.01.2020, most of the above decisions rendered by this Court were considered and relief was granted to similarly placed customs Agent.

8. Defending the impugned order, the learned counsel for the Customs Department drew my attention of this Court in para 22 of the counter affidavit wherein it has been stated that eventhough the offence was committed during March 2010 and DRI issued a show cause notice on 11.09.2012, as a licensing authority, the respondent, namely, the Commissioner of Customs, Chennai, Commissionerate VIII came to know about the commission of offence only on 06.06.2016 vide a letter C.No.VIII/13.02.2009 CHAI dated 20.05.2016 received by the Assistant Commissioner (CBLF) Tuticorin and therefore the impugned show cause notice dated 01.07.2006 was well within the time prescribed under Regulation 20(1) of CBLR, 2013.

9. The learned counsel for the respondents further drew my attention to the additional affidavit filed on behalf of the respondent pursuant to the direction of this Court on 23.11.2020. A specific reference was made to the paragraph Nos.4 to 7 which reads as under:

"4. In compliance thereof, the respondent states that the Government of India, Ministry of Finance has appointed the Commissioner of Customs (Airport & Air Cargo), Chennai, Commissioner of Port (Import), Chennai, Commissioner of Port (Export), Chennai under the provisions of Sec.491) of the Customs Act, 1962. In terms of the Public Notice No.153/2002 dated 3.5.2002 the jurisdiction/area were Port of Chennai, Port of Ennore, the Anna International Airport and other specified area as stated in the Notification No.15/2002-Cus(NT) dated 7.3.2002 under the provisions of Sec.4(1) of the Customs Act, 1962.

5. The respondents state that, a separate Commissionerate under the Commissioner (Customs-Imports) was in existence from 3.5.2002 to 14.10.2014 to handle all works under import at Chennai Port. Subsequently, with effect from 15.10.2014 the jurisdictions/area of the Commissionerates were distributed among the various Commissionerate as given in Public Notice No.01/2014 dated 10.10.2014 under which Chennai VIII Commissionerate came into existence.

6. The respondents state that from 15.10.2014 the Commissionerate VIII came into existence. CHA/CBS section deals with licensing and other issues of Customs Brokers is under the jurisdiction of Commissioner ate VIII.

7. The respondents state that the show cause notice dated 11.09.2012 issued by the Addl.Directorate General, DRI Zonal Unit, Chennai was only marked to the notices, Commissioner of Customs (Sea port-Imports), Customs House, Chennai, Commissioner of Customs, Tuticorin. The Order in Original No.43946/2015 dated 30.12.2015, copy was marked only to notices, Chief Commissioner of Customs, Customs House, Chennai, the ADG, DRI, Chennai, Commissioner of Customs, Tuticorin, Asst/Dy.Commissioner of Customs, Group I, Customs House, Chennai 1 who comes under Chennai II Commissionerate."

10. Under these circumstances, it is submitted since the 1st respondent as the licence authority came to the knowledge of the alleged offence only on 06.06.2016 vide a letter dated 20.05.2016 received from the Assistant Commissioner (CBLF), Tuticorin, the show cause notice was within time.

11. Heard the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents.

12. The facts are not in dispute. As per the respondent, the impugned notice dated 01.07.2016 has been issued purportedly pursuant to receipt of a communication on 06.06.2016 vide letter dated 20.05.2016 bearing reference C.No.VIII/13/02/2009 received from the Assistant Commissioner (CBLR), Tuticorin. However, the copy of the communication has not been filed.

13. Be that as it may, it will be useful to refer to some of the passages from the impugned show cause notice. Paras 2, 3, 4, 5 and 7 are reproduced below:-

> ''2.An Order-in-Original no.43946/2015, dated 30.12.2015 was passed by the Commissioner of Customs (Chennai-II), for illegal importation of base oil in the guise of Rubber Processing & Extender Oil in the name of M/s.Quality Lube Products Private Limited, Chennai vide Bills of entry nos.460967/19.03.2010, 460968/19.03.2010 and 481515/11.03.2010. The Bill of entry no.481515 dated 11.03.2010 was filed by Shri M.Muniasamy, Proprietor of M/s.SMS Logistics acting as authorized representative of M/s.Paragon Logistics, Chennai, at Tuticorin, in the name of M/s.Quality Lube Pvt. Ltd.,
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> 3. The Directorate of Revenue Intelligence was in receipt of specific intelligence that certain unscrupulous persons are importing Base Oil in the name of Rubber Processing & Extender Oil, thereby mis-declaring description and value of the goods, so as to evade payment of appropriate customs duty. In pursuance of the said intelligence, five live consignments imported by M/s.Lubecon Petro Products Pvt. Ltd., from M/s.Al Zahara Petro Chemicals LLC, UAE were examined.
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> 4. While investigating the aforesaid case, it was also revealed that they also imported and cleared 41 containers covered under 3 bills of entry, base oil by mis-declaring as RPO (Rubber Processing Oil) in the name of M/s.Quality Lube Products, pvt., Ltd., Chennai. Accordingly, a Show Cause Notice

F.No.VIII/48/10/2012-DRI dated 11.09.2012 was issued.

5. Shri J.Raja Anathan, Managing director of M/s.Quality Lube Products Pvt. Ltd., in his voluntary statements under Section 108 of the Customs Act, 1962, stated that 41 containers of goods declared as ''RPO'' has been imported in name of M/s.Quality Lube Products Pvt. Ltd., Chennai, vide three bills of entry bearing no.460967 dated 19.03.2010, 460968 dated 19.03.2010 and 481515 dated 11.03.2010. Third bill of entry no.481515 dated 11.03.2010 was filled in Tuticorin Customs. Further in his statement dated 07.04.2011, he stated that he never knew that actual goods are base oil and admitted to his mistake of violating the customs procedure by helping Mr.Mohamed Azam of M/s.AL Zahara, UAE and stated that he had also been part of whole fraud and conspiracy by yielding to their cheap tactic.

7. Sri.Muniasamy, acting as authorized representative of CHA, M/s.Paragon Logistics, at Tuticorin, who has filed the said bill of entry No.481515 on behalf of M/s.Quality Lube Products Pvt., in his voluntary statement given under section 108 of the Customs Act, 1962 dated 02.03.2012 stated that he used to receive import & export documents directly from his clients or through M/s.Paragon Logistics, Chennai and file the same with Tuticorin customs for clearance; that he ised to send the blank import annexure forms and get the same signed by Shri E.Rajendran, owner of CHA firm of M/s.Paragon Logistics; that he had deposited an amount of Rs.2,00,000/- with Shri E.Rajendran, owner of M/s.Paragon Logistics (CHA) that he used to operate the CHA licence of M/s.Paragon Logistics, Chennai having its branch office registered at Tuticorin with the knowledge of Shri E.Rajendran; that he ised the login ID and password of M/s.Paragon Logistics, Chennai for online filing the customs documents at Tuticorin; that he had cleared import cargo with description of rubber processing & extender oil; that he or his staffs had not obtained authorization letters from the subject IEC holders/importers; that Shri Sadasivam and Shri Tamil selvam (both are employees of Shri.Mohamed Azam, the supplier) informed him that the

importers are known to them; that in good faith he handled import consignments and cleared the same to them instead of importer. Thereby, he knowingly dealt with the persons who were not the importers or his representatives.''

14. Prima facie it appears that the impugned show cause notice is time barred and contrary to the law settled by this Court. The petitioner however appears to have participated in the adjudication of the impugned show cause notice and had acquiesced in it. Initially, the petitioner had filed a preliminary objection dated 23.7.2016. This was received by the office of the 1st respondent on 28.7.2016. Thereafter, the petitioner filed additional written submission on 26.6.2016 and enclosed few case laws.

15. Without awaiting for the adjudication of the impugned show cause notice, the petitioner has rushed to this court by way of the present writ petition on 5.12.2016. Since the petitioner has partly had acquiesced in the said show cause proceedings by participating in the said proceedings, it was not open for the petitioner to file this writ a petition questioning the jurisdiction of the respondent.

16. Therefore, this court is inclined to dismiss the writ petition. The first respondent is directed to pass appropriate orders in accordance with law as settled by this court order within a period of 60 days from date of receipt of this order. Such order shall be passed without being influenced with the views expressed by this Court regarding the limitation for dismissing this writ petition. Needless to state, before such order is passed pursuant to the impugned show cause notice, petitioner shall be also be heard.

17. This writ petition stands dismissed with the above observation. No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

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To

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

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

W.P.No.43185 of 2016
and WMP.No.37016 of 2016

CP(CO)
CB(06/08/2021)