IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.03.2021
PRONOUNCED ON : 18.03.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.5119 of 2017
and W.M.P.Nos.24304 and 5415 of 2017

M/s.Bhuvan Shipping Services,
Represented by its Partner
K.Karthikeyan
1st Floor, No.10, West Karikalan Street,
Adambakkam, Chennai 600 008. .. Petitioner

vs

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

2.The Inquiry Officer &
Assistant 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 Certiorari calling for the records pertaining to the impugned show cause notice dated 31.01.2017 in F.No.R-30/2009/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

The petitioner has challenged the impugned show cause notice dated 31.1.2017 issued by the first respondent calling upon the petitioner to show cause as to why the license issued to the petitioner should not be revoked and the security deposited by the petitioner should not be forfeited and/or penalty should not be imposed under Regulation 20(1) read with Regulation 18 of the Customs Broker Licensing Regulation, 2013.

2. The impugned show cause notice has been challenged primarily on the ground that the show cause notice has been issued beyond the period of limitation prescribed under Regulation 20 read with Regulation 18 of the Customs Broker Licensing Regulation, 2013. It is submitted that the petitioner’s license was suspended by an order dated 12.9.2016 under Regulation 19 of the aforesaid Regulation and therefore the impugned notice calling upon the petitioner to show cause as to why the license of the petitioner should not be revoked and the security deposited by them should not be forfeited or penalty should not be imposed and the Commissioner of Customs should have been issued notice within a period of 90 days from date of the offence report. However, the impugned show cause notice has been issued on 31.01.2017.

3. In this connection, a reference is made to the following decisions of the court:-

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

ii) Indair Carrier Pvt. Ltd., vs Commissioner of Customs (General) [2016 (337) E.L.T.41 (Del)]

iii) KTR Logistics Solutions Pvt. Ltd., vs Commissioner of Customs, Chennai [2020 (371) E.L.T.685(Mad.)]

iv) Santon Shipping Service vs Commissioner of Customs [Manu/TN/3305/2017]

v)Necko Freight Forwarders Ltd., vs Commissioner of Customs (General) [2018 (360) E.L.T.879 (Del.)]

vi) Commissioner of Customs (Imports) vs A.M.Ahmed& Co [W.A No.371 of 2015]

vii) Gopal Agarwal vs Commissioner of Customs, New Delhi [2015 (326) E.L.T.593(Tri.-Del.)]

viii) A.K.Impex vs Union of India [1991 (53) E.L.T.203 (Mad.)]

ix) Sowparnika Shipping vs The Commissioner of Customs in [W.P No.37796 of 2016]

x) Masterstroke Freight Forwarders (P) Ltd., vs Commissioner of Customs (I), Chennai [2016 (332) E.L.T.300 (Mad.)]

xi) Sunil Dutt vs Commissioner of Customs (General), NCH [2016 (337) E.L.T.162 (Del.)]

xii) Impexnet Logistic vs Commissioner of Customs (General) [2016 (338) E.L.T.347 (Del.)]

xiii) Ovesrseas Air Cargo Service vs Commissioner of Customs (General), New Delhi [2016 (340) E.L.T.119 (Del.)]

4. Defending the impugned order, the learned counsel for the respondents submitted that an offence case was registered against the petitioner on 7.9.2016 in respect of Bill of Entry No.6225653 dated 3.8.2016 for facilitating clearance of goods without following the KYC through a power of attorney of the petitioner. It is submitted that the petitioner who was a custom broker;

a) was not only aware of the actual IEC holders in respect of M/s.M&R Enterprises, but also knew that this IEC was being mis-used by persons other than the IEC holders;

b) in collusion with the persons who were misusing the IEC of M/s.M&R Enterprises filed the Bill of Entry No.6225953 dated 03.08.2016 without verifying the actual importer and also aware that the IEC of M/s.M & R Enterprises is misused for the subject import vide the above mentioned Bill of Entry.

c) two more Bills of Entry were filed on previous occasions without ascertaining the actual importer and also aware that the concerned importers were misusing the IEC of others; and

d) having known all these facts of the unscrupulous activities and the persons behind the modus-operandi, they have failed to bring it to the knowledge of the Customs Authorities.

5. Decision to suspend the license of the petitioner was taken under Section 19(1) of CBLR, 2013, on 12.09.2016 based on offence report received from the Mumbai Commissionerate by a fax received on 07.09.2016.

6. It is further submitted that on the same date the impugned show cause notice dated 31.01.2017 was issued Order in Original No.53233 of 2017 dated 31.01.2017 was also passed against the petitioner. Suspension of the license issued to the petitioner was revoked while continuing the prohibition order No.28 of 2016 dated 9.11.2016 passed by the Commissioner of Customs, Mumbai to be continued in all six stations of the Mumbai Customs Zones I, II and III.

7. I have considered the arguments of the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents and perused the impugned order and

Regulations. I have also considered the case laws. Procedure for revoking licence or for imposing penalty is governed by Regulation 20 of the Customs Broker Regulation, 2013.

8. Regulation 20 of the Customs Broker Regulation, 2013 is reproduced below:-

> 20. Procedure for revoking licence or imposing penalty. — (1) The 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 licence 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 said Deputy Commissioner of Customs or Assistant Commissioner of Customs.
>
> (2) The Commissioner of Customs may, on receipt of the written statement from the Customs Broker, or where no such statement has been received within the timelimit specified in the notice referred to in sub-regulation (1), direct the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, to inquire into the grounds which are not admitted by the Customs Broker.
>
> (3) The Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, shall, in the course of inquiry, consider such documentary evidence and take such oral evidence as may be relevant or material to the inquiry in regard to the grounds forming the basis of the proceedings, and he may also put any question to any person tendering evidence for or against the Customs Broker, for the purpose of ascertaining the correct position.
>
> (4) The Customs Broker shall be entitled to cross-examine the persons examined in support of the grounds forming the basis of the proceedings, and where the Deputy Commissioner of Customs or Assistant Commissioner of Customs declines to examine any person on the grounds that his evidence is not relevant or material, he shall record his reasons in writing for so doing.
>
> (5) At the conclusion of the inquiry, the

Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, shall prepare a report of the inquiry and after recording his findings thereon submit the report within a period of ninety days from the date of issue of a notice under sub-regulation (1).

(6) The Commissioner of Customs shall furnish to the Customs Broker a copy of the report of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, and shall require the Customs Broker to submit, within the specified period not being less than thirty days, any representation that he may wish to make against the said report.

(7) The Commissioner of Customs shall, after considering the report of the inquiry and the representation thereon, if any, made by the Customs Broker, pass such orders as he deems fit either revoking the suspension of the license or revoking the licence of the Customs Broker or imposing penalty not exceeding the amount mentioned in regulation 22 within ninety days from the date of submission of the report by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, under sub-regulation (5) :

Provided that no order for revoking the license shall be passed unless an opportunity is given to the Customs Broker to be heard in person by the Commissioner of Customs.

9. Regulation 20 of the Customs Broker Regulation, 2013 makes it clear that the Commissioner of Customs shall issue a notice in writing to a customs broker within a period of 90 days from the date of receipt of an " offence report" stating that the grounds on which it is proposed to revoke the license or impose penalty requiring a customs broker to submit within a period of 30 days to the Deputy Commissioner of Customs or Assistant Commissioner of Customs nominated by him, a written statement of defence and also to specify in the said statement whether the customs broker desires to be heard in person before the Deputy commissioner of the Customs or the Assistant Commissioner of Customs.

10. Admittedly in this case, the 90^{th} day from the date of offence report dated 7.9.2016 would have expired on 06.12.2016 whereas the impugned show cause notice dated 31.11.2017. It was thus beyond the limitation prescribed under Regulation 20

of the Customs Broker Licensing Regulation, 2013. This Court has also taken similar view in W.P.No.26686 of 2015 in its order dated 10.01.2010. It was held as follows:-

> 5.The learned counsel for the petitioner submits that, the issue in the case on hand is no longer res integra, and that it is squarely covered by the decisions of this Court rendered in a batch of cases in M/s.KTR Logistics Solutions Pvt.Ltd. Vs. The Commissioner of Customs and Another and etc., 2019 SCC OnLine Mad 9481 and in Santon Shipping Services Vs. The Commissioner of Customs and Another, 2017 SCC OnLine Mad 7084.
>
> 6.The learned counsel for the petitioner further submits that the issue was also settled by several decisions of this Court. Particularly, he drew my attention to the decision of this Court in Masterstroke Freight Forwarders Pvt.Ltd Vs. Commissioner reported in 2016 (332) E.L.T. 300 (Mad).
>
> 7.Mr.V.Sundareswaran, the learned Standing Counsel for the respondent drew my attention to the decision of the Division Bench of the Bombay High Court in Prinicpal Commr. Of CUS. Vs Unioson clearing Pvt. Ltd., 2018 (361) 3/6 http://www.judis.nic.in W.P.No.26686 of 2015 E.L.T. 321 (DB-Bom).
>
> 8.Heard the learned counsel for the petitioner and the learned Standing Counsel appearing for the respondents.
>
> 9.Though the decision of the Division Bench of the Bombay High Court in Principal Commr. of CUS. Vs. Unioson clearing Pvt.Ltd., 2018 (361) E.L.T. 321 (DB-Bom), has given a different interpretation to the effect that the limitation prescribed in Regulation 20 of the Customs License Brokers Act, 2014 is directory and not mandatory, I am bound to follow the views taken by this Court in Santon Shipping Services Vs. The Commissioner of Customs and Another, 2017 SCC OnLine Mad 7084 and Masterstroke Freight Forwarders Pvt. Ltd. Vs. Commissioner, 2016 (332) E.L.T. 300 (Mad).

10.Since the Show Cause Notice dated 07.07.2014 was issued beyond 90 days, the consequential order passed by the 1st respondent is liable to be quashed and is hereby quashed .

11. In view of the above, the present writ petition is allowed. No cost. Consequently, connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

kkd
To

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

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

+1cc to Mr.T.Pramd kumar , Advocate SR.No. 17455
+1cc to M/s.Hari Radhakrishnan, Advocate SR.No. 17520

W.P.No.5119 of 2017 and
W.M.P.Nos.24304 and 5415 of 2017

sr II
A.SK(23.04.2021)