IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.1271 of 2019
and
W.M.P.No.1423 of 2019
[Video Conferencing]

M/s.Map Shipping & Company
New No.161, Old No.80, Thambu Chetty Street
3rd Floor, P.O.Box No.1224
Chennai - 600 001.
Rep by its Partner Shri P.Devan ...Petitioner

-Vs.-

1. Commissioner of Customs - VIII,
Chennai VIII Commissionerate,
Custom House,60, Rajaji Salai,
Chennai - 600 001.

2. The Additional Commissioner of Customs,
Special Intelligence & Investigation Branch,
O/o Commissioner of Customs - III,
Chennai III Commissionerate,
Custom House, 60, Rajaji Salai,
Chennai - 600 001. ...Respondents

Prayer:-Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the 1st respondent made in F.No.CHN/R-649/CBS dated 15.06.2018 quash the same and directing the 1st respondent herein to lift the order of suspension, activate the license and allow the petitioner to operate as a Customs Broker in the customs stations at Chennai.

For Petitioner : Mr.B.Satish Sundar

For Respondent : Mr.K.Mohanamurali,
Senior Panel Counsel, for R1 & R2

ORDER

The petitioner has challenged the impugned suspension order dated 15.06.2018 for alleged infraction of Custom Broker Licensing Regulation, 2013 on account of certain Bill of Entries filed on 04.05.2017 for an importer named M/s.Ekdant Enterprises from Mumbai.

2.It is the specific case of the petitioner that the petitioner was granted Custom House Agent License under the provisions of the erstwhile Rules and that the Custom House Agent License was renewed from time to time and was valid upto 11.09.2020. It is the further case of the petitioner that two of their employees who were employed only during the month of April 2017 colluded with one Mr.Ali, an intermediary and filed Bill of Entry on 04.05.2017 by forging the signature and fabricating the documents by misusing the license of the petitioner and that the petitioner had also given a complaint to the jurisdictional police station on 08.06.2017 and simultaneously had also filed a complaint on 08.06.2017 before the Assistant Commissioner of Customs (Group 6) on account of misuse of license by two errant employees [Vinodh and Balaji] who were recruited only during the month of April 2017.

3.The learned counsel for the petitioner further submits that long after the complaint was lodged, statements were recorded from the authorised office of the petitioner namely, P.Devan on 17.08.2018 which preceded the impugned suspension order. The impugned suspension order is primarily challenged on the ground that the suspension order cannot continue and is contrary to the scheme of Customs Brokers Licensing Regulations, 2013 which was in force during the material period.

4.The learned counsel for the petitioner submits that as per Regulation 19 of the aforesaid Regulations, if the license is suspended under the Regulation, the Commissioner of Customs has to give an opportunity of hearing to the Customs Broker within a period of 15 days of such suspension of the license and is required to pass such order as he deems fit either revoking the suspension or continuing it, as the case may be, within a period of 15 days from the date of hearing granted to the Customs Broker.

5.It is submitted that in this case, though the hearing was conducted on 28.06.2018, no orders have been passed. Under these circumstances, it is submitted that the impugned suspension cannot continue. That apart, it is submitted that even if a decision is taken for continuing the suspension, a procedure has been prescribed for revoking the license or imposing penalty. The said procedure has not been followed by the respondents.Instead the respondents have allowed the license to lapse on 20.09.2020 for no fault of the petitioner.

6.The learned counsel for the petitioner placed reliance on the decision of this Court in the case of East West Freight Carriers (P) Ltd., v. Collector of Customs, Madras reported in

1995 (77) E.L.T. 79 (Mad.). A specific reference was made to paragraphs 7, 8 and 9 of the said decision which reads as under:

> "7.I have considered the submissions made by the learned counsel for the parties. The power of the Collector to take action under Regulation 21(1) is not questioned in the writ petition. It cannot also be disputed that under Regulation 21(2) the Collector has the power to suspend the license of a Customs House Agent when enquiry against such agent is pending or contemplated where immediate action is necessary.
>
> 8.In my opinion the power to suspend the license is to be exercised where immediate action is necessary. A plain reading of the impugned order does not show that the Collector applied his mind to consider whether immediate action was necessary in this case. The order also does not state that the license was suspended because immediate action was necessary. I do not express here one way or the other as to whether on the facts of the case immediate action was necessary or was not necessary because it is for the Collector to take decision in that regard.
>
> 9.In the absence of any indication that there was application of mind by the Collector on the aspect as to whether immediate action was necessary, in my opinion, the impugned order cannot be sustained. The Collector gets jurisdiction to suspend the license in cases where immediate action is necessary. In this view I consider it just and appropriate to pass the following order:-
>
> > The writ petitions allowed and the impugned order dated 26-9-1994 issued by the respondent is quashed. It is open to the respondent if so desired to exercise the power under Section 21(2) and pass appropriate orders."

7.The learned counsel for the petitioner also placed reliance on few other decisions viz.,

1. Commissioner of Customs (Exports), Chennai v. Ganesh Shipping Agency, reported in 2009 (245) E.L.T 120 (Mad.)
2. Indair Carrier Pvt. Ltd v. Commissioner of Customs (General) reported in 2016 (337) E.L.T. 41 (Del.)
3. Impexnet Logistic v. Commissioner of Customs (General) reported in 2016 (338) E.L.T. 347 (Del.)

8.The learned counsel for the petitioner submits that at this belated point of time, the proceedings for revoking the license cannot be countenanced in the light of the well settled principle and law which has been repeatedly followed by this Court in the light of the provisions of the aforesaid Regulations.

9.Opposing the prayer, the learned Senior Panel Counsel for the respondents submits that the petitioner had been issued with a show cause notice dated 14.08.2018 along with the importer and others involved in an attempt to import the goods as "Furniture, Plastic Buttons and Porcelain tiles", when indeed the imported goods were semi-precious buttons, chatons etc., It is further submitted that even though no order has been passed under Regulation 19(2) of the aforesaid Regulations, in view of the fact that the petitioner has been issued with a show cause notice dated 14.08.2018, the petitioner should submit to the aforesaid proceedings and that ultimate decision to be arrived in the aforesaid proceedings will have a bearing on the issue as to whether the impugned suspension order has to be revoked or not.

10.I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Panel Counsel for the respondents.

11.The respondent having suspended the license of the petitioner under Regulation 19(1) of the Customs Brokers Licensing Regulations, 2013 on 15.06.2018 was required to take a decision one way or other, as to whether to continue with the suspension order or to drop the proceedings and/or allow the petitioner to operate the license. A hearing was also held on 28.06.2018 and even thereafter, no further order has been passed either to extend the period of suspension or to drop the proceedings as is contemplated under Regulation 19(2) of the aforesaid Regulations.

12.The petitioner has now been issued with a show cause notice under Section 124 of the Customs Act, 1962 r/w Sections 28 and 45 of the said Act. In particular, the petitioner has been asked to show cause as to why penalty should not be imposed on the petitioner under Section 112(A) and 114AA of the Customs Act, 1962, for the alleged violation of Regulation 11(9) of the Customs Brokers Licensing Regulations, 2013. If the respondent Customs Department wanted to revoke the license, the respondent ought to have issued notice under Regulation 20 of the aforesaid Regulations which reads as under:

> "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 time-limit 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 licence 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."

13.Since the impugned suspension order dated 15.06.2018 has not culminated in the order either revoking the order of suspension or continuing with the order of suspension followed by a proceeding under Regulation 20 of the aforesaid Regulations which has been extracted above, I deem it fit to hold that the suspension order has outlived its period of validity.

14.Under these circumstances, I am inclined to hold that the impugned suspension order is no longer in force. At the same time, liberty is given to the respondent to examine whether, on merits, the proceedings can be initiated under Regulation 20 of the aforesaid Regulations, in accordance with the well settled principles of law which has been repeatedly followed by this Court including the case of Santon Shipping Services v. The Commissioner of Customs and another made in CMA No.730 of 2016 dated 13.10.2017.

15.This order will be without prejudice to the proceedings initiated against the petitioner and the others involved in the import which lead to the suspension of license vide impugned order in terms of show cause notice dated 14.08.2018 of the Additional Commissioner of Customs, Special Intelligence & Investigation Branch (SIIB) bearing reference S.Misc.26/2018-SIIB-SCN/SIIB/54/2018.

16.The Writ Petition stands disposed of with the above observations. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

pgp

To

1. The Commissioner of Customs-VIII,
   Chennai VIII Commissioner,
   Custom House,
   60, Rajaji Salai,
   Chennai - 600 001.

2. The Additional Commissioner of Custom,
   Spl.Intelligence & Investigation Branch,
   O/o. Commissioner of Customs-III,
   Chennai III Commissionerate,
   Custom House,
   60, Rajaji Salai,
   Chennai - 1.

+1cc to Mr.K.Mohanamurali, Advocate, S.R.No.2657

+1cc to Mr.B.Sathishsundar, Advocate, S.R.No.2542

W.P.No.1271 of 2019

SVI(CO)
RGA(10/02/2022)