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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13.06.2022

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.No.4698 of 2019
and WMP No.5324 of 2019

M/s.Freight Link Logistics
represented by its Proprietor
Shri.S.Manivannan

...Petitioner

Vs.

The Commissioner of Customs,
Chennai VIII 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 to call for the records pertaining to the impugned order-in-original No.67273/2019 dated 23.01.2019 (Date of issue 29.01.2019) in F.No.R-156/2011/CBS, passed by the respondent and quash the same.

For Petitioner	:	Mr.G.Deerick Sam
For Respondent	:	Mr.A.P.Srinivas Senior Standing Counsel

ORDER

Heard Mr.G.Deerick Sam, learned counsel for the petitioner and Mr.A.P.Srinivas, learned Senior Standing Counsel for the respondent.

2. The petitioner is a licensed customs broker holding licence bearing No.R-156/2011/CBS. A Bill of Entry has been filed by the petitioner on 23.10.2018 for clearance of imported goods. While other Bills of Entry filed on behalf of the same importer had been processed and cleared, the present consignment came to be scrutinised and certain discrepancies allegedly found.

3. There were allegations made by the respondent, <https://hcservices.ecourts.gov.in/hcservices/> allegedly on reasonable belief, that the goods comprising the



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consignment in question had been attempted to be smuggled into India by means of non-declaration and mis-declaration, both in terms of quantity and quality. This had led to the suspension of the petitioner's licence on 03.01.2019 in terms of Regulation 16(1) of the Customs Brokers Licensing Regulations, 2018 (in short 'Regulations').

4. A post decisional personal hearing was afforded to the petitioner on 10.01.2019 under Regulation 16(2), in compliance of which, the petitioner has attended and filed a written submission on the same day. An order had come to be passed by the respondent on 23.01.2019 continuing the suspension of licence, which is impugned in the present Writ Petition.

5. The petitioner had, at the time of admission, been granted an order of interim stay on 19.02.2019, as a result that the continuation of suspension stood stayed. There was no embargo upon the initiation and continuation of the adjudication process. This is the consequence of the interim order obtained by the petitioner which has been properly understood by the authorities, insofar as while treating the suspension as stayed, the officer proceeds to adjudicate the matter and issued a show cause notice on 27.02.2019 in terms of Regulation 17(1) of the Regulations. The show cause notice was responded to by the petitioner on 03.04.2019 and an inquiry report forwarded by the inquiring authority on 13.06.2019

6. While this is so, Regulation 17 of the Regulations provides for the Principal Commissioner or Commissioner of Customs passing an order of adjudication considering the inquiry report and the response(s) thereto, within a period of 90 days from date of submission of the enquiry report.

7. In the present case, while the inquiry report is admittedly dated 13.06.2019 and the reply has been promptly filed on 12.07.2019, admittedly, no order of adjudication has been passed till date. The timelines set out under Regulation 17(7) have thus been violated by the authority vitiating the proceedings in full. Regulation 17(7) reads as follows:

17. Procedure for revoking license or imposing penalty -

.....

(7) The Principal Commissioner or 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 license of the Customs Broker 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 Principal Commissioner of Customs or Commissioner of Customs, as the case may be.'

8. It is an admitted position that though the inquiry report is dated 13.06.2019 and the petitioner responded thereto promptly on 12.07.2019, the adjudication has been left to stall in violation of the timeline under Regulation 17(7) and has not been finalised or completed even till date. In light of this development pending writ petition, the impugned order of continuation of suspension consequently loses all significance and is set aside.

9. The Writ Petitioner succeeds and the Writ Petition is allowed. No costs. Connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

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

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GP (CO)
PR (28/06/2022)