BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.11.2022

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P(MD).No.9736 of 2021
and
W.M.P(MD).No.7438 of 2021

M/s.Insoorya Express Cargo,
Represented by its Managing Partner,
Mala Murugan,
No.27-C/5, Muniasamypuram 2nd Street,
Tuticorin-628 004. ... Petitioner

Vs.

1.The Commissioner of Customs,
Custom House,
New Harbour Estate,
Tuticorin-628 004.

2.The Assistant Commissioner of Customs/
Inquiry Officer,
Custom House,
Tuticorin-628 004. ...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records of the 1st Respondent culminating in the issue of the show cause notice No.02/2021, dated 25.02.2021 from File No.C.No.VIII/13/28/2002-CHAL; DIN No.DIN-20210281OH0000000AA8 and further inquiry proceedings based on the same and quash the same.

For Petitioner : Mr.S.Murugappan
For Respondents : Mr.N.Dilip Kumar
Standing Counsel

ORDER

This writ petition is filed praying for a writ of Certiorari calling for the records of the 1st Respondent culminating in the show cause notice No. 02/2021, dated 25.02.2021 from File No.C.No.VIII/13/28/2002-CHAL; DIN No.DIN-20210281OH0000000AA8 and further inquiry proceedings based on the same and quash the same.

2. It is submitted that Petitioner is an Authorised Customs Broker holding a Customs Broker Licence No.TUT-09/2019 (Old No.TUT-01/2015) issued by the Commissioner of Customs, Tuticorin and transacting business at Chennai, Bangalore and Nellore Customs based on the licence issued at Tuticorin. It is submitted that a Joint surprise check was conducted by Central Bureau of Investigation, Anti Corruption Bureau, Chennai at Calyx Container Terminals Private Limited, Kathirvedu Village, Chennai on 30.08.2019, on the basis of certain allegations of corruption against a Customs Appraiser, by name, V.Sangamithra viz., the Officer is demanding and accepting undue advantage from Customs Broker's for issue of Let Export Order/Out of Charge Order in respect of export/import consignments. During the course of

search operations, it is reported that cash was recovered from the concerned customs official and on further investigation, one N.Murugan and R.Darvin were found to collect money from various Customs Brokers and handover the amounts so collected to the said Customs Official. It is submitted that N.Murugan had become an approver.

3. It is submitted that on the basis of certain handwritten sheets given by N.Murugan, an amount of Rs.2,000/- was shown as given by the Petitioner firm's employee P.Bharathkumar to the said custom official. Based on the statements recorded, a charge sheet came to be filed by Central Bureau of Investigation before VIII Principal Special Judge for CBI Cases, Chennai on 31.08.2019 in Reference No.RC MA1-2019-A-0008 under various sections of Cr.P.C. and Prevention of Corruption Act. It is submitted that the above case is still pending. In the meantime, show cause notice No.02/2021, dated 25.01.2021 has been issued by 1st Respondent for taking action against Petitioner firm in terms of Customs Broker Licensing Regulations, 2018 (hereinafter referred to as CBLR) on the premise that Regulation 10(i) of CBLR was violated by the Petitioner firm and it was thus proposed to revoke the Customs Broker Licence, order forfeiture of security deposit and impose penalty under various Regulations of CBLR. The Petitioner was called upon to show cause and directed to appear for personal hearing before the Assistant

Commissioner of Customs, who was appointed as Inquiry Officer to conduct the inquiry.

4. The Petitioner submitted a detailed representation before the Inquiry Officer *inter alia* stating that proceedings initiated under CBLR are premature and before conducting and taking any action, Respondents must await for the outcome of the proceedings initiated before VIII Principal Special Judge for CBI Cases, Chennai. It was submitted that Petitioner firm should be granted permission to cross-examine the Investigating Officer, employee and also the customs officials under Regulation 17(4) of the CBLR.

5. It is submitted that the above request came to be rejected by the Respondents that there is no absolute right of cross-examination and if sufficient corroborative evidence exist, cross-examination is not necessary and further as sufficient corroborative evidence exist, he had proceeded to reject the request. In this regard, reliance was sought to be placed on the Judgment in the case of ***Kanungo and company Vs Collector of Customs, Calcutta and others*** reported in ***1983 (13) E.L.T. 1486 (S.C)*** and the judgment of High Court of Andhra Pradesh in the case of ***Shalini Steels Private Limited Vs Commissioner of Customs and Central Excise, Hyderabad*** reported in ***2011 (269) E.L.T. 485.***

6. It is submitted by the learned Standing Counsel for the Respondents that departmental proceedings in terms of CBLR and criminal proceedings are independent and therefore, the request made by the Petitioner to keep the departmental proceedings initiated under CBLR until the disposal of the criminal proceedings in abeyance is clearly un-sustainable.

7. Heard both sides and perused the materials on record.

8. This Court finds that insofar as the request for keeping the CBLR proceedings in abeyance until the disposal of the criminal proceedings may not be justified. It is trite law that criminal proceeding, departmental proceeding and civil proceeding are independent, the purpose of each of the proceeding are distinct. [1]The standard of proof, the objectives of the two proceedings are different. Thus the above contention of the Petitioner is liable to be rejected. The departmental proceedings initiated under CBLR need not be kept in abeyance until the disposal of the criminal proceedings.

9. It appears that the request for cross examination has been rejected by giving reasons that are vague in terms of Regulation 17 of CBLR, which sets out the procedure for revoking licence or imposing penalty. In this regard,

1.2022 SCC Online SC 1064, 2.2021 SCC Online SC 976,
3.(2021) 5 SCC 795, 4.(2020) 13 SCC 474

reliance was sought to be made on Regulation 17(1) to 17(4) of CBLR, which reads as under:

> *"**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 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 permission 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."*

On reading of the above Regulation it appears that if a request for cross-examination is made, the appropriate authority ought to examine that request and enable cross-examination and shall decline permission only after recording the reasons. The impugned proceedings rejects the request on the premise that there is no absolute right of cross-examination as there is corroborative evidence, the same appears to be vague inasmuch as what is the corroborative evidence that is available has not been set out, except for a mere assertion, there is no details set out in support thereof.

10. In the circumstances, this Court is of the view that Petitioner shall make a request for cross-examination within a period of two weeks from the date of receipt of copy of this order. On receipt of such request, the Inquiry Officer shall examine and dispose of the request keeping in mind Regulation 17(3) and 17(4) of CBLR. The inquiry shall continue from the stage of request for cross-examination. This Court intends to clarify that the limited request by the Petitioner was only an opportunity for cross-examination and the above directions are issued only in the light of the limited request.

11. With the above direction, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

16.11.2022

Index : Yes / No
Internet : Yes/ No
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To

1.The Commissioner of Customs,
Custom House,
New Harbour Estate,
Tuticorin-628 004.

2.The Assistant Commissioner of Customs/Inquiry Officer,
Custom House,
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MOHAMMED SHAFFIQ, J.

sn

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