IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2023

CORAM

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.No.26507 of 2021
and
W.M.P.Nos.27950 and 27951 of 2021

M/s.Pacific Logicare Services LLP,
Room No.1823, 1st Floor,
Vathiyar Kandhappa Street,
Choolai, Chennai - 600 112.
Rep by its Partner Pawan Kumar Sant Singh. ... Petitioner

Vs

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

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records pertaining to Order in Original No.63711/2018 dated 01.06.2018 issued in F.No.CHN/R-309/2014/(CBS) Chennai, passed by the respondent herein and to quash the same, as the said order has been passed in violation of Regulation

17(1) of the CBLR, 2018, which mandates the issuance of show cause notice within 90 days from the date of offence report and the non-compliance of the same vitiates the impugned order in original dated 01.06.2018.

For Petitioner : Mr.S.Baskaran

For Respondent : Ms.Anu Ganesan
Junior Panel Counsel

ORDER

The petitioner has challenged the impugned Order-in-Original No.63711 of 2018 dated 01.06.2018, passed by the respondent as the Licensing Authority.

2. By the impugned order, the respondent has revoked the Customs Broker's Licence issued to the petitioner and has consequently forfeited the security deposit/bank guarantee of Rs.5,000/- and revoked the "H" Cards, "G" Cards and "F" Cards issued to the employees and directed them to be surrendered. The respondent has also imposed penalty of Rs.54,000/-

3. The petitioner has challenged the impugned Order-in-Original No.63711 of 2018 dated 01.06.2018 primarily on the ground that the offence report is dated 14.06.2017. However the Show Cause Notice under Regulation 20(1) of the Customs Broker Licensing Regulations, 2013 was issued to the petitioner only on 17.12.2017.

4. It is submitted that under Regulation 20(1) of the Customs Broker Licensing Regulations, 2013 [now under Regulation 17(1) of the Customs Broker Licensing Regulations, 2018] the said Show Cause Notice ought to have issued to the petitioner within a period of 90 days from the date of receipt of an offence report. In other words, the said Show Cause Notice ought to have issued to the petitioner on or before 12.09.2017. Since the Show Cause Notice was was issued only on 17.12.2017 it was beyond the limitation. The Show Cause Notice dated 17.12.2017 has now culminated in the impugned Order-in-Original No.63711 of 2018 dated 01.06.2018

5. It is submitted that the impugned Order-in-Original No.63711 of 2018 dated 01.06.2018 was passed on 01.06.2018 but was not communicated to the petitioner. It is submitted that mere communication of the Order-in-Original No.63711 of 2018 dated 01.06.2018 to Mr.M.R.Naresh Babu, a "F" Card holder of the petitioner is not sufficient. It is submitted that the respondent ought to have served a copy of the Order-in-Original No.63711 of 2018 dated 01.06.2018 on the petitioner at their registered premises.

6. It is submitted that the petitioner came to know about the passing of the impugned impugned Order-in-Original No.63711 of 2018 dated 01.06.2018 only when one of the partners of the petitioners firm was informed that since no appeal has been filed against the impugned Order-in-Original No.63711 of 2018 dated 01.06.2018, all "H", "G" and "F" Cards were required to be surrendered

7. The learned counsel for the petitioner has placed reliance on the decision of this Court in the case of ***A.M.Ahamed and Co*** Vs.

Commissioner of Customs (Imports), Chennai reported in 2014 (309) E.L.T 433 (Mad) and another decision of the Delhi High Court in the case of ***Leo Cargo Services*** Vs. ***Commissioner of Customs, Airport and General, New Delhi*** reported in 2022 (382) E.L.T. 30 (Del).

8. The learned counsel for the petitioner has also placed reliance on the following decisions:-

1. ***Impexnet Logistic Vs. Commissioner of Customs(General)*** 2016 (338) ELT 347 (Del)
2. ***Overseas Air Crgo Vs. Commissioner of Customs(General), New Delhi*** 2016(340) ELT 119(Del)
3. ***Santon Shipping Services Vs. Commissioner of Customs, Tuticorin and another*** in C.M.A.No.730 of 2016 dated 13.10.2017
4. ***Commissioner of Customs, Tuticorin Vs. MKS ShippingAgency Pvt.ltd*** 2017(348) ELT 640 (Mad)
5. ***Sowparnika Shipping Services Vs. Commissioner of Customs, Chennai-VIII*** 2017 (352) ELT 286 (Mad)
6. ***Sabin Logistics Pvt. Ltd. Vs. Commissioner of Customs, Chennai-VIII*** 2019 (367) ELT 200 (Mad)
7. ***KTR Logistics Solutions Pvt. Ltd. Vs. Commissioner of Customs, Chennai***

2020 (371) ELT 685 (Mad)

8. ***Sea Queen Shipping Services Vs. Commissioner of Customs, Chennai-VIII*** 2021 (376) E.L.T. 496 (Mad.)

9. ***M/S. Maruvur Arasi Logistic Pvt. Ltd. Vs. Commissioner of Customs, Chennai-VIII*** *in* W.P.No.2958/2018 dated 04.02.2020

10. ***Aristo Shipping Services Vs. Pricipal Commissioner of Customs, Chennai-VIII*** 2021 (377) ELT 562 (Mad)

9. The learned Junior Panel counsel for the respondent submits that the writ petition is devoid of merits and further submits that the offence report was indeed received by the office of the respondent only on 18.09.2017 and therefore the Show Cause Notice dated 17.12.2017 issued to the petitioner by the respondent was well within the period of limitation of 90 days from the date of receipt of Offence report.

10. The learned Junior Panel Counsel for the respondent has drawn attention to the copy of a letter dated 15.09.2017 of Assistant Commissioner of Customs (CBS), NCH. Mumbai-1 bearing reference

No. F.No.S/8-22/2017-18 CBS addressed to the Assistant Commissioner of Customs(CBS), Office of the Commissioner of Customs (Chennai-VII), Custom House No.60, Rajaji Salai, Chennai-600001 which was received by the Deputy Commissioner of Customs (CBS), Custom House, Chennai **on 18.09.2017.**

11. The learned Junior Panel Counsel for the respondent further submitted that impugned Order-in-Original No.63711 of 2018 dated 01.06.2018 was received by Mr.M.R.Naresh Babu, the "F" Card holder of the petitioner and therefore even on this count also the writ petition is liable to be dismissed and relied on the decision of the Supreme Court in **Assistant Commissioner (CT), LTU, Kakinadu and Others vs. M/s.Glaxo Smith Kline Consumer Health Care Limited** (2020) 36 GSTL 305.

12. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Junior Panel Counsel for the respondent.

13. The petitioner was prohibited from operating in Mumbai Customs Zone I,II &III under the provisions of Regulation 23 of CBLR,2013 in terms of Order No.33/2017-18 dated 08.09.2017 passed by the Principal Commssioner of Customs (General) Mumbai Zone-1, for alleged violations of Regulations 10, 11(b), 11(d), 11(n) and 17(5) of CBLR,2013. The said Order was extended by an order No.46/2017-18 dated 10.11.2017 passed by the Principal Commssioner of Customs (General) Mumbai Zone-1. In para 12 of the said order under the caption “Discussion and Finding”, it has been held that the initial prohibition order was passed, based on the report received from the Additional Commissioner of Customs, CIU/JNCH, Mumbai vide F.NO.SG/Misc-45/2017-18 CIU/JNCH dated **14.06.2017** which necessitated an immediate action to be taken against the petitioner to prevent further misuse of the licence issued to the petitioner.

14. The issue as to whether the Offence Report dated 14.06.2017 was received by the respondent on 18.09.2017 or before 18.09.2017 i.e

on 14.06.2017 is a disputed question of fact. It has to be determined only by the Tribunal. The petitioner has to therefore file a statutory appeal in terms of Regulation 19 of the Customs Broker Licensing Authority Regulations, 2018 which has came into force at the time of the impugned order was passed on 01.06.2018.

15. Therefore this writ petition is liable to be dismissed with Liberty to the petitioner to file a Statutory Appeal before the Appellate Tribunal within a period of 30 days from the date of receipt of a copy of this order.

16. If such an appeal is filed within such time, the Tribunal shall endeavour to dispose the appeal as expeditiously as possible as the petitioner's license was suspended as early as 12.10.2017 and thereafter revoked on 01.06.2018 vide impugned Order-in-Original No.63711 of 2018 dated 01.06.2018.

17. All the issues relating to limitation arising out of interpretation of the regulations are left open to be decided by the Appellate Authority.

18. This writ petition stands disposed of with the above observations. No costs. Consequently, connected writ miscellaneous petition is closed.

19.07.2023

Index: Yes/ No
Internet : Yes/No
Speaking/Non-speaking Order
Neutral Citation : Yes/No
jas/kkd

Note: Issue Order copy 22.09.2023.

To

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

C.SARAVANAN,J.
Jas/kkd

W.P.No.26507 of 2021

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