IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2023

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No.11026 of 2021
and
W.M.P.No.11679 of 2021

M/s.OPMS Clearing & Forwarding Agencies (P) Ltd.,
Represented by its Managing Director, Mr.V.Mani,
Aged 65 years,
Flat No.24, 1st Floor, "P" Block,
No.51, Chevalier Sivaji Ganesan Salai (South Boag Road),
Prem Nagar Colony, T.Nagar,
Chennai 600 017. ... Petitioner

v.

1.The Principal Commissioner of Customs (Chennnai-VIII),
Custom House,
No.60, Rajaji Salai,
Chennai 600 001.

2.The Assistant Commissioner of Customs / Inquiry Officer,
Chennai - VIII Commissionerate,
Custom House,
No.60, Rajaji Salai,
Chennai 600 001. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records of the 1st respondent culminating in the issue of the Show Cause Notice dated 09.11.2020 from File No.R-288/CHA (Case file II) and further inquiry proceedings based on the same and quash the same.

For petitioner : M/s J.Ragini for
Mr.S.Murugappan

For Respondents : Mrs.Hema Muralikrishnan
Standing Counsel

ORDER

The writ petition is filed praying for a writ of Certiorari calling for the records of the 1st Respondent culminating in the issue of the Show Cause Notice dated 09.11.2020 from File No.R-288/CHA (Case file II) and further inquiry proceedings based on the same.

2. The petitioner is an Authorised Customs Broker holding a Customs Broker Licence No.R-288/CHA, issued by Commissioner of Customs, Chennai, which is valid up to 14.03.2025. A Joint surprise check was conducted by Central Bureau of Investigation, Chennai (in short “CBI”) at Calyx Container Terminals Pvt. Ltd, Kathirvedu Village, Chennai on 30.08.2019, on the basis of certain

allegations of corruption against that Customs Appraiser Smt. V.Sangamithra. During the search, a sum of Rs.1500/- was recovered and a hand written note maintained by one Shri.N.Murugan was seized by officials. The said Shri.N.Murugan has become an approver. Thereafter, CBI filed charge sheet before VIII Principal Special Judge for CBI Cases, Chennai and case is pending under Reference no. RC MA1-2019-A-0008. Subsequently, a show cause notice dated 09.11.2020 has been issued to petitioner by the 1st Respondent. The Petitioner submitted their reply and appeared for personal hearing and requested the case to be kept in abeyance until criminal case is over and to Cross Examine the Investigating Officer, Clearing Clerk Shri.V.Ganesh Kumar and other customs officials. The requests were rejected relying upon the judgments of the Hon'ble Supreme Court in the case of *Kanungo and company Vs Collector of Customs, Calcutta and others* reported in *1983 (13) E.L.T. 1486* 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.*

3. It is submitted by the learned counsel for the petitioner and the learned

counsel for the respondents in unison that the issue involved in this writ petition stands covered by the order of the Madurai Bench of this Court in W.P.(MD).No.9735 of 2021 dated 16.11.2022. The relevant portion of the order is extracted hereunder:

> *"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, 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.*

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

(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."*

4. In view of the same, the writ petition is disposed of in terms of the decision in W.P.(MD).No.9735 of 2021 dated 16.11.2022. No costs. Consequently, the connected writ miscellaneous petition is closed.

31.07.2023

Index: Yes/No
Internet: Yes/No
Speaking / Non speaking order

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To

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MOHAMMED SHAFFIQ,J.

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