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W.P.No.11489, 11583, 11588 and 11608 of 2021



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2023

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THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.Nos.11489, 11583, 11588 and 11608 of 2021

and

W.M.P.12236, 12331, 12336 and 12357 of 2021

M/s.Marine Container Services (India) Pvt.Ltd,
Represented by its Assistant Manager and Authorised Signatory,
Mr.K.N.Chandrasekaran,
Aged 56 years,
New No.21, Swami Sivananda Salai,
Chennai – 600 005.

... Petitioner in
W.P.No.11489 of 2021

M/s.Sea Bird Shipping & Logistics Pvt.Ltd.,
Represented by its Managing Director,
Mr.K.Dhanasekaran,
Aged 49 years,
59/31, Katchaleeswarar Agraharam Street,
Parrys, Chennai – 600 001.

... Petitioner
in W.P.No.11583 of 2021

M/s.Freight Field (M) Pvt.Ltd.,
Represented by its Director, Mr.K.Rajasekaran,
Aged 66 years,
No.3, Kumaran Street,
Meenambakkam,
Chennai – 600 027.

... Petitioner
in W.P.No.11588 of 2021

M/s.Blueway Logistics,



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Represented by its Proprietrix, Ms.S.Jayasri,
Aged 42 years,
New No.18, Old No.325, 4th Floor,
Thambu Chetty Street,
Chennai – 600 001.

... Petitioner

in W.P.No.11608 of 2021

Vs.

1.The Principal Commissioner of Customs (Chennai – 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 in all W.P.'s

Prayer in W.P.No.11489 of 2021: Writ Petition filed under Article 226 of the Constitution of India for issuance of 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-301/CHA (Case file) Din No.DIN-2020 1173 MY 0000 B187E4 and further enquiry proceedings based on the same and quash the same.

Prayer in W.P.No.11583 of 2021: Writ Petition filed under Article 226 of the Constitution of India for issuance of 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-291/2013-CHA (Case file) DIN No. DIN-2020 1173 MY0000555ECC and further enquiry proceedings based on



the same and quash the same.

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Prayer in W.P.No.11588 of 2021: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, (i) 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-324/CHA (Case File) DIN.No.DIN2020 1173MY0000333B78 and further enquiry proceedings based on the same and quash the same and (ii) grant interim stay of all the proceedings initiated in terms of the Show Cause Notice dated 09.11.2020 issued from File No.R-324/CHA(Case file)DIN.No.DIN2020 1173MY0000333B78 by the 1st respondent pending disposal of the writ petition filed by the petitioner herein.

Prayer in W.P.No.11608 of 2021: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, (i) 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-244/2013-CHA (Case file) and further inquiry proceedings based on the same and quash the same (ii) to grant interim stay of all the proceedings initiated in terms of the Show Cause Notice dated 09.11.2020 issued from File No.R-244/2013-CHA (Case file) by the 1st respondent pending disposal of the writ petition filed by the petitioner herein.

For Petitioners : Ms.J.Ragini
[in all W.P's]
For Respondents : Ms.Hema Muralikrishnan



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Senior Standing Counsel
[in W.P.No.11489 of 2021]

Mr.Rajnish Pathiyil
Senior Panel Counsel
[in W.P.Nos.11583,
11588 & 11608 of 2021]

COMMON ORDER

These Writ Petitions have been filed challenging the impugned show cause notices dated 09.11.2020 and further enquiry proceedings conducted by the respondents herein.

2. Since common issue arise for consideration in all these four Writ Petition, all these Writ Petitions were heard together and disposed of vide this Common Order.

3. The case of the petitioners' is that they were restricted to cross examine the witnesses as sought for in their replies dated 24.10.2020, 28.01.2021 and 16.12.2020 submitted to the 2nd respondent herein. In the present case, at the time of conducting an enquiry, eventhough the petitioners' had filed their replies, the respondents had failed to provide opportunity for cross examination of the witnesses as requested by the petitioner. Further, in terms of provisions of Section 17(4) of the Customs Brokers Licensing



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Regulations Act 2018, (for short, CBLR Act) the petitioner is entitled to cross examine the witnesses in respect of the issues, which formed the basis of the proceedings.

3.1 Further, the relevant Sub-Regulation provides for the Deputy Commissioner of Customs or the Assistant Commissioner, Customs to decline the permission to cross examination of any person, when the evidence is not relevant and for doing so, reasons has to be recorded in writing.

3.2 Therefore, in terms of provisions of Section 17(4) of the CBLR Act, the petitioners filed their replies dated 24.10.2020, 28.01.2021 and 16.12.2020 requesting the second respondent to permit the petitioners to cross examine the witnesses, however, the petitioners' request was declined. The main grievance of the petitioners' is that the second respondent has declined permission to the petitioners to cross examine the witnesses without assigning any reasons. Hence, the present writ petitions.

4. Ms.J.Ragini, the learned counsel for the petitioners' would submit that though the Writ Petitions are filed only against the impugned show cause notice as well as the consequential enquiry proceedings, to which,



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the petitioners' had filed their replies, however, the petitioners have restricted the relief only to the extent of denial of the request made by them for cross examination of the witnesses.

5. Ms.Hema Muralikrishnan, learned Senior Standing Counsel for the respondent-Customs Department would fairly admit that the respondents have issued the impugned show cause notice and conducted the enquiry proceedings, however, they have not recorded any reasons with regard to the refusal of the petitioners' request to cross examine the witnesses. Therefore, she would submit that appropriate orders may be passed and the same would be complied.

6. Heard learned counsel for both sides and also perused the materials on record.

7. In the present case, the impugned show cause notices were issued on 09.11.2020 and thereafter, the petitioners' have filed their replies dated 24.10.2020, 28.01.2021 and 16.12.2020. In their replies, the petitioners' had sought for cross examination of the witnesses. However, without assigning any reasons, as provided in terms of Section 17(4) of the CBLR



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Act, 2018, the respondents passed the impugned order, declining the petitioners' request.

7.1 In this context, it would be apposite to refer to Section 17(4) of the CBLR Act, 2018, which is extracted hereunder:

“(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”.

7.2 Thus, from a reading of the Section 17(4), it is clear that the petitioners are entitled for the cross examination of the witnesses/persons, and the authorities concerned shall decline such relief, in the event, if they decline, they are supposed to record reasons for such declination.

7.3 In the present case, as contended by the learned counsel for both the parties, no reasons have been recorded by the second respondent for the refusal of the request made by the petitioners' for cross examination. Hence, the enquiry report was filed in contrary to the provisions of Section 17(4) of



the CBLR Act, 2018.

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8. Therefore, this Court is inclined to set aside the inquiry report passed by the respondent-Customs Department dated 04.02.2021 and 05.02.2021 and further, the reasons assigned for refusal of the petitioners request for cross examination is not sufficient. Further, pursuant to the enquiry proceedings the respondents have seized a sum of Rs.81,550/- and loose sheets containing hand written informations.

9. In view of the above, this Court passes the following order:

(i) The Enquiry Report issued by the 2nd respondent dated 04.02.2021 and 05.02.2021 are set aside and the matter is remanded back to the Authority concerned for the cross examination of the persons as requested by the petitioners' in their replies dated 24.10.2020, 28.01.2021 and 16.12.2020.

(ii) This Court further directs the Authority concerned to pass final order after providing opportunities of personal hearing to the petitioners'.

(iii) The aforesaid exercise is directed to be completed within a period of three (3) months from the date of receipt of a copy of this order.



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Accordingly, these Writ Petitions stand disposed of. No costs.

Consequently, connected miscellaneous petitions are closed.

28.11.2023

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Internet: Yes

Index : Yes / No

Speaking order/Non-Speaking order

Neutral Citation : Yes / No

To

- 1.The Principal Commissioner of Customs (Chennai – 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.



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KRISHNAN RAMASAMY, J.

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