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W.P. No.12193 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2023

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.12193 of 2021 and
W.M.P. No.12974 of 2021

M/s.G.Masilamani

Represented by its Proprietor Mr.G.Masilamani,

Aged 64years,

11/6,Krishnan Koil Street,

Chennai - 600 001.

.. Petitioner

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

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records of the 1st respondent culminating in the issue of the Show Cause Notice dated 09.11.2020 from File No.R-615/CHA (Case file) DIN No-DIN-20201173MY000000B632 and further inquiry proceedings based on the same and quash the same.



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For Petitioner : Mr.S.Murugappan

For Respondents : Mrs.Hema Muralikrishnan

ORDER

The writ petition is filed praying for a Writ of Certiorari to call for the records of the 1st Respondent culminating in the issue of the Show Cause Notice dated 09.11.2020 from File No.R-615/CHA (Case file) DIN No-DIN-20201173MY000000B632 and further inquiry proceedings based on the same and quash the same.

2.It is submitted by both the learned counsel for the petitioner and the respondents that the issue raised in the present writ petition stands covered by a judgment of Madurai Bench of Madras High 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. The standard of proof, the objectives of the two proceedings are different. Thus the above contention of the Petitioner is liable



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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.

(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."



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3.Recording the same the writ petition stands disposed of. No costs.

Consequently, connected miscellaneous petition is closed.

15.11.2023

Speaking (or) Non Speaking Order

Index: Yes/No

Neutral Citation: Yes/No

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To:

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No.60, Rajaji Salai,
Chennai - 600 001.
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MOHAMMED SHAFFIQ, J.

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