



W.P.(MD) Nos.19083 & 19084 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.07.2024

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD) Nos.19083 & 19084 of 2021

and

W.M.P.(MD) No.15854 of 2021

W.P.(MD) No.19083 of 2021

M/s.Eskay Logistics,
Rep. by its Proprietor Mr.J.John Kennedy,
155/3, 1st Floor, Victoria Street,
Tuticorin - 628 001.

... Petitioner

Vs.

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

... Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorari calling for the entire records of the respondent relating to the impugned order dated 08.10.2021 in C.No.VIII/13/34/2002-CHAL, DIN-2011081OH0000777BB7 and Order-in-Original No.10/2021 passed by the respondent and quashing the same as illegal, arbitrary, barred by limitation, ureasonableness and without jurisdiction.



W.P.(MD) Nos.19083 & 19084 of 2021

For Petitioner : Mr.K.Jayaraj

For Respondent : Mr.R.Aravindan
Senior Standing Counsel

W.P.(MD) No.19084 of 2021

M/s.Eskay Logistics,
Rep. by its Proprietor Mr.J.John Kennedy,
155/3, 1st Floor, Victoria Street,
Tuticorin - 628 001.

... Petitioner

Vs.

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

2.The Inquiry Officer,
Assistant Commissioner of Customs,
Custom House, New Harbour Estate,
Tuticorin - 628 004.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorari calling for the entire records of the respondent relating to the impugned Show Cause Notice dated 07.06.2021 in C.No.VIII/13/34/2002-CHAL, DIN-20210681OH0000162181 & Show Cause Notice No.19/2021 issued by the first under Regulation 17(1) of CBLR, 2018 and quash the same as illegal, arbitrary, unfair and without jurisdiction.

For Petitioner : Mr.K.Jayaraj

For Respondents : Mr.R.Aravindan
Senior Standing Counsel



W.P.(MD) Nos.19083 & 19084 of 2021

WEB COPY

COMMON ORDER

By this common order, both these Writ Petitions are being disposed of.

2. In W.P.(MD) No.19083 of 2021, the petitioner has challenged the impugned Order-In-Original No.10/2021 [C.No.VIII/13/34/2002-CHAL – DIN-2011081OH0000777BB7], dated 08.10.2021. Operative portion of the impugned Order-In-Original No.10/2021, dated 08.10.2021 reads as under:-

ORDER

- i. I revoke the Customs Broker Licence No.02/2007-TUT (PAN No. ABDPN1577F) issued to M/s. Eskay Logistics, Tuticorin under Regulation 14 of Customs Brokers Licensing Regulations, 2018 read with Regulation 17 of CBLR, 2018.*
- ii. I also order for forfeiture of the whole security deposit furnished by the Customs Broker for issuance of CB Licence No.02/2007-TUT (PAN No. ABDPN1577F) under Regulation 14 of CBLR, 2018.*
- iii. I also impose a Penalty of Rs. 50,000/-(Fifty Thousand Only) upon M/s. Eskay Logistics, Tuticorin in terms of Regulation 18 of CBLR, 2018.*



W.P.(MD) Nos.19083 & 19084 of 2021

3. The aforesaid impugned Order-In-Original No.10/2021, dated 08.10.2021 has proceeded with Show Cause Notice No.19/2021 [C.No.VIII/13/34/2002-CHAL & DIN-20210681OH0000162181], dated 07.06.2021 issued under Regulation 17(1) of the Customs Brokers Licensing Regulations, 2018 which is impugned in W.P.(MD) No.19084 of 2024.

4. The petitioner has challenged the aforesaid Show Cause Notice No.19/2021, dated 07.06.2021 on the ground that the entire proceedings initiated by the respondents are without jurisdiction and beyond the period of limitation. Specifically, the learned counsel for the petitioner would draw attention to the reliance placed by the first respondent in paragraph 18 of the impugned Show Cause Notice. Paragraph 18 of the impugned Show Cause Notice reads as under:-

18. Reliance is placed on the following documents while issuing the above show cause notice.

- i. Offence report received from Principal Commissioner of Customs S.I.B. Cell, Gujarat Pipavav Port Ltd. vide C.No.VIII/48-07/Seizure/Shah Aroma/P.I/2019-20/Cus.T/08-09 dated 18.02.2021.*



W.P.(MD) Nos.19083 & 19084 of 2021

WEB COPY

5. It is therefore submitted that the limitation for issuance of Show Cause Notice has expired long before on 17.05.2021, i.e. three months from 18.02.2021, whereas, the impugned Show Cause Notice was issued only on 07.06.2021. It is therefore submitted that in the light of the decisions of this Court rendered in several cases which were also followed by the Hon'ble Division Bench of this Court in its order dated 13.10.2017 passed in C.M.A.No.730 of 2016, in the case of **Santon Shipping Services Vs. The Commissioner of Customs, Customs House, New Harbour Estate, Tutircorin and another**, the impugned proceedings are liable to be held without authority of law.

6. On merits, the learned counsel for the petitioner would also draw attention to the Report of the Enquiry Officer dated 17.08.2021 pursuant to the impugned Show Cause Notice No.19/2021, dated 07.06.2021. It is submitted that the Enquiry Officer has given a clean chit to the petitioner. Despite the same, the respondents have passed the impugned Order-In-Original No.10/2021, dated 08.10.2021, overriding the findings given by the Enquiry Officer in the aforesaid Enquiry Report dated 17.08.2021.



W.P.(MD) Nos.19083 & 19084 of 2021

7. The learned Senior Standing Counsel for the respondents, on the other hand, would submit that the submission of the learned counsel for the petitioner that the impugned Show Cause Notice No.19/2021, dated 07.06.2021 issued under Regulation 17(1) of the Customs Brokers Licensing Regulations, 2018 was time barred, cannot be accepted. In this connection, the learned Senior Standing Counsel for the respondents, would draw attention to the averments in paragraph 7 of the counter affidavit which reads as under:-

7. It is submitted that the offence report dated 18.02.2021 in C.No.VIII/48-07/Seizure/Shah Aroma/P.I/2019-20/Cus.T/08-09 from the Principal Commissioner of Customs, Gujarat was received in this office on 26.03.2021 and an SCN dated 07.06.2021 was issued to the Customs Broker, M/s.Eskay Impex as per Regulation 17(1) of CBLR, 2018 within the time limit of 90 days only and not hit by limitation of time.

8. To substantiate the same, the learned Senior Standing Counsel for the respondents also produced a copy of the communication received from the respondents' counter part in Jamnagar, Gujarat, wherein, the alleged irregularity committed by 'H' Card Holder of the petitioner in manipulating the documents in respect of imported goods for clearance of the goods has been noted .



W.P.(MD) Nos.19083 & 19084 of 2021

9. It is further submitted that the said intimation of the offence that was registered on 18.02.2021 was communicated by a letter dated 19.03.2021 which was received by the respondent Customs Department on 26.03.2021. Therefore, the limitation under Regulation 17(5) of the Customs Brokers Licensing Regulations, 2018 would have expired only 25.06.2021 and since the impugned Show Cause Notice No.19/2021 was issued on 07.06.2021, it is not open for the petitioner to state that the impugned Show Cause Notice was without jurisdiction. It is therefore submitted that the decision cited by the learned counsel for the petitioner is of no relevance.

10. The learned counsel for the petitioner would submit that he may have further submissions.

11. I am of the view, this Writ Petition need not be kept pending on the files of this Court any longer. The petitioner can at best be given liberty to challenge the impugned Order-In-Original No.10/2021, dated 08.10.2021 passed under Regulation 17(7) of the Customs Brokers Licensing Regulations, 2018, before the Customs, Excise and Service Tax Appellate Tribunal, South Zone, Chennai.



W.P.(MD) Nos.19083 & 19084 of 2021

WEB COPY

12. Since the time for filing appeal has already expired on the date of this order, liberty is given to the petitioner to file statutory appeal before the Tribunal, within a period of 30 days from the date of receipt of a copy of this order.

13. If the petitioner files such appeal within the aforesaid period, the Customs, Excise and Service Tax Appellate Tribunal, South Zone, Chennai shall dispose of the same on merits and in accordance with law, as expeditiously as possible, on its turn.

14. It is open for the petitioner to canvass the issue before the Tribunal in the light of the Report of the Enquiry Officer dated 17.08.2021 giving the clean chit to the petitioner.

15. Since the petitioner had benefit of an order of interim stay of this Court, the impugned Order-in-Original shall remain suspended for a period of 90 days from today to facilitate the petitioner to obtain suitable interim order from the Tribunal in the proposed appeal. In case the petitioner fails to file such appeal before the Tribunal within the aforesaid



W.P.(MD) Nos.19083 & 19084 of 2021

period, the respondents are at liberty to take suitable actions against the petitioner in the manner known to law.

16. In the result,

(i) W.P.(MD) No.19084 of 2021 is to be held infructuous.

It became infructuous on date of its filing. Therefore, W.P.(MD) No.19084 of 2021 is closed.

(ii) W.P.(MD) No.19083 of 2021 challenging the impugned Order-In-Original No. 10/2021 dated 08.10.2021 passed by the respondent, is disposed of by giving liberty to the petitioner to file statutory appeal before the Tribunal, within a period of 30 days from the date of receipt of a copy of this order.

(iii) No costs. Consequently, the connected Miscellaneous Petition is closed.

09.07.2024

Index: Yes/ No

Neutral Citation: Yes / No

Speaking Order / Non-Speaking Order

JEN



W.P.(MD) Nos.19083 & 19084 of 2021

Copy To:

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

2.The Inquiry Officer,
Assistant Commissioner of Customs,
Custom House, New Harbour Estate,
Tuticorin - 628 004.



WEB COPY



W.P.(MD) Nos.19083 & 19084 of 2021

C.SARAVANAN, J.

JEN

W.P.(MD) Nos.19083 & 19084 of 2021
and
W.M.P.(MD) No.15854 of 2021

09.07.2024