



W.A.(MD)No.1243 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 03.02.2025

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN**

**W.A.(MD)No.1243 of 2019
and
C.M.P.(MD)No.10681 of 2019**

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

... Appellant / Respondent

Vs.

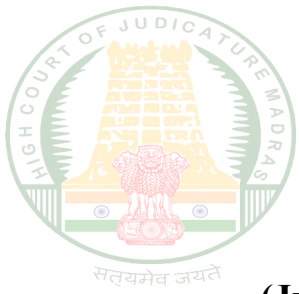
T.Shanmugasundaram

... Respondent / Petitioner

Prayer : Writ Appeal filed under Clause XV of Letters Patent, to set aside the order dated 26.07.2018 passed in W.P.(MD).No.2043 of 2016 on the file of this Court.

For Appellant : Mr.Mr.R.Nandhakumar,
Senior Standing Counsel.

For Respondent : Mr.B.Sathish Sundar,
For Mr.M.Ramasamy



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JUDGMENT

(Judgment of the court was delivered by G.R.Swaminathan, J.)

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Thiru.T.Shanmugasundaram was granted customs broker license by the Commissioner of Customs, Customs House, New Harbour Estate, Tuticorin on 26.03.2013. The licensee opened customs broker branch at Chennai in January 2014. F card was also obtained at Chennai in May 2014. Whiles, certain irregularities were allegedly noticed in the operation of the licensee in their Chennai Branch. Finally on 31.08.2015, Shanmugasundaram was prohibited from operating his customs broker license at Chennai. This was communicated to the Commissioner of Customs, Tuticorin by the Assistant Commissioner of Customs, Chennai vide communication dated 06.10.2015. Acting on the same, show cause notice dated 11.11.2015 was issued by the Commissioner of Customs, Tuticorin under Regulation 20(1) of Customs Brokers Licensing Regulations, 2013 calling upon Shanmugasundram to submit his written explanation as to why the customs broker license issued to him should not be revoked and the security deposit of Rs.75,000/- furnished by him shall not be forfeited and as to why, penalty should not be imposed on him under Regulation 22 of Customs Brokers Licensing Regulations, 2013.

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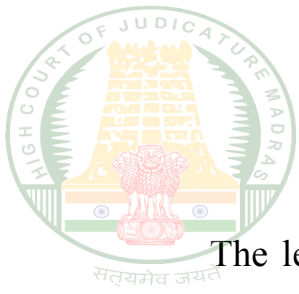
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2013. Challenging the said show cause notice, Shanmugasundram filed W.P.(MD)No.2043 of 2016. The said writ petition was allowed by the learned Single Judge vide order dated 26.07.2018. Challenging the same, this writ appeal was filed by the Commissioner of Customs, Tuticorin.

2.Heard the learned standing counsel for the appellant and the learned counsel for the respondent / writ petitioner at length. The show notice impugned in the writ petition was issued under Regulation 20(1) of Customs Brokers Licensing Regulations, 2013. It reads as follows:

“20. Procedure for revoking licence or imposing penalty. —

(1) The 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 licence 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.”



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The learned Single Judge quashed the show cause notice issued by the appellant on the ground that it was issued beyond the limitation period of 90 days proscribed in the Regulation.

3.The question that calls for consideration is whether the learned Single Judge was right in doing so.

4.It is true that the aforesaid regulation stipulates that the notice should be issued within 90 days from the date of receipt of an offence report. The expression “offence report” was dealt with by a learned Judge of this Court (Mr.Justice V.Ramasubramanian as his Lordship then was) in the decision reported in **2014 (309) E.L.T. 433 (Mad.) (A.M.Ahamed and Company Vs. Commissioner of Customs (Imports), Chennai)**. Paragraph Nos.17 to 20 of the said judgment read as under:-

“17. Unfortunately, the Regulations do not define what an offence report is and the Regulations do not even state as to how an offence report is to be sent. The Regulations do not even use the expression "offence report" anywhere else other than Regulation 22(1). Even the grounds on which a licence can be revoked or suspended, mentioned in Regulation 20(1), do not include the definition of the expression offence or offence report.



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There are only three grounds on which a licence can be suspended or revoked under sub-regulation (1) of *Regulation 20. Regulation 20(1)* reads as follows:-

"20.Suspension or revocation of licence. (1) The Commissioner of Customs may, subject to the provisions of regulation 22, revoke the licence of a Customs House Agent and order for forfeiture of part or whole of security, or only order forfeiture of part or whole of security, on any of the following grounds, namely :

(a) failure of the Customs House Agent to comply with any of the conditions of the bond executed by him under regulation 10;

(b) failure of the Customs House Agent to comply with any of the provisions of these regulations, within the jurisdiction of the said Commissioner of Customs or anywhere else;

(c) any misconduct on his part, whether within the jurisdiction of the said Commissioner of Customs or any where else which in the opinion of the Commissioner renders him unfit to transact any business in the Customs Station.

18. The above regulation has only 3 ingredients namely (i) failure to comply with the bond conditions (ii) failure to comply with the regulations and (iii) a misconduct, for any of which, the license can be revoked. Since the above regulation does not use the expression "offence report", we have to presume that a report indicating the availability of any one of the above 3 ingredients should be construed as an offence report. Consequently, the date of knowledge gained by the Commissioner, by means of any communication, be it show cause notice or order-in-original, has



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to be construed as the date of receipt of the offence report. Otherwise, a report about anyone of the above 3 ingredients can be sent at any time, even after five years or ten years.

19. The Regulations not only fail to prescribe what an offence report is and how it is to be sent, but they do not also prescribe the person competent to send it. In such circumstances, the interpretation sought to be given by the petitioner is more acceptable.

20. The time limit prescribed in Regulation 22(1) has to be understood in the context of the strict time schedule prescribed in various portions of the Regulations. Regulation 20(2), for instance, entitles the Commissioner, to suspend the licence of an agent, in appropriate cases where immediate action is necessary. Regulation 22(3) prescribes a time limit of 15 days. Regulation 22(1) prescribes a time limit within which action is to be initiated. It also prescribes the time limit under Regulation 22(5). Therefore, considering the fact that the whole proceedings are to be commenced within a time limit and also concluded within a time frame, I am of the view that the show cause notice issued to the petitioner on 08.05.2010 with a copy marked to the first Respondent should be taken as the date of receipt of the offence report. Consequently, the period of 90 days should commence only from that date. If so calculated, the impugned proceedings have obviously been initiated beyond the period of 90 days.”



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5. Applying the aforesaid decision, we have no doubt that the show cause notice dated 02.12.2014 issued by the Additional Director General, Directorate of Revenue Intelligence, Chennai Zonal Unit would definitely be qualified to be an offence report. But then, there is nothing on record to show that the appellant was in receipt or was atleast in the knowledge of the aforesaid show cause notice dated 02.12.2014. In the affidavit filed in support of the writ petition, the respondent / writ petitioner has nowhere averred that the authority who issued show cause notice impugned in the writ petition was cognizant of the show cause notice dated 02.12.2014.

6. In Paragraph No.20 of the decision reported in **2014 (309) E.L.T. 433 (Mad.) (A.M.Ahamed and Company Vs. Commissioner of Customs (Imports), Chennai)**, it was specifically mentioned that copy of the show cause notice issued to the writ petitioner therein on 08.05.2010 was marked to the Commissioner of Customs (Imports), Chennai. In this case, there is nothing on record to show that copy of the show cause notice dated 02.12.2014 was issued to the Commissioner of Customs, Tuticorin. Likewise, the Hon'ble Division Bench in the decision of



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reported in 2016 (334) E.L.T. 274 (Mad.) (Commissioner of Customs

(Seaport / Import), Chennai Vs. Sanco Trans Limited) held that in the counter affidavit filed by the authority, it was admitted that investigation report was received by them on 29.05.2012. Whereas the show cause notice issued under Regulation 20(1) of Customs Brokers Licensing Regulations, 2013 was issued on 26.10.2015. Thus, in the case laws relied on by the learned counsel for the respondent / writ petitioner, facts were not in dispute. The notices impugned therein were issued after the expiry of 90 days after receipt of the offence reports. On the other hand, facts projected in this writ petition do not establish that the notice was time-barred. We are therefore of the view that the learned Single Judge was not right in allowing the writ petition. In this view of the matter, the order impugned in this writ appeal is set aside and the writ appeal is allowed. We make it clear that the issue of limitation is left open. No costs. Consequently, connected miscellaneous petition is closed.

(G.R.S. J.) & (M.J.R. J.)
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