(2015) 10 MAD CK 0132

In the Madras High Court

Case No : W.P. No. 16832/2015 and M.P. No. 1/2015

Cappithan Agencies APPELLANT

Vs

The Commissioner of Customs, Chennai-VIII RESPONDENT

Date of Decision : 13-10-2015

Acts Referred:

Citation : (2015) 326 ELT 150

Hon'ble Judges : R. Mahadevan, J.

Bench : Single Bench

Advocate : Hari Radhakrishnan, for the Appellant; K. Mohanamurali, SCCG, for the Respondent

Final Decision : Dismissed

Judgement

R. Mahadevan, J.—This Writ Petition is filed to issue a Writ of Certiorari, calling for the records relating to the Order In Original No. 38294/2015, dated 29.05.2015 passed by the Respondent and to quash the same.

2. The case of the Petitioner is that the Petitioner Company is a licensed customs broker, bearing license No. 102 issued by Cochin Customs Commissionerate under the Regulation 9(1) of the Customs House Agents Licensing Regulation, 2005. The Petitioner had acted as a customs house agent for various importers. During the year 2012-2013, on investigation the Department alleged that one Company by name, M/s. Antonie and Becouerel Organic Chemical Company had cleared raw materials used to manufacture drugs and pharmaceuticals without import licence issued under the Drugs and Cosmetics Act, 1940 and without Assistant Drug Controller''s clearance. The Respondent, vide order dated 12.7.2013 prohibited the Petitioner from working as a Customs House Agent, in terms of Regulation 21 and hence, the Petitioner filed W.P. No. 19670/2013, wherein this court by order dated 24.9.2013, directed the Respondent to dispose of the representation of the Petitioner. Accordingly, the Respondent after considering the representation of the Petitioner, passed an Order in Original No. 22447/2013, dated 12.11.2013, continuing the prohibition order and stated that

further decision in the matter will be taken after completion of the enquiry proceedings by the Cochin Customs and as against the same the Petitioner filed an appeal in C. 40192/2014-DB before the Tribunal. In the meantime, the Commissioner of Customs, Cochin had passed an order in original dated 7.4.2014 imposing penalty of R. 10,000/- on the Petitioner Company and thereafter, the Tribunal after considering the said order dated 7.4.2014, passed final order in No. 40781/2014 dated 15.10.2014, directing the Respondent to pass necessary orders. On repeated reminders from the Petitioner, the Respondent passed the impugned order dated 29.5.2015, continuing the prohibition order. Hence, this Writ Petition has been filed.

3. The Respondent filed a counter affidavit, wherein it is averred as follows:-

a. The Petitioner is the holder of customs broker licence No. 102 issued by Cochin Commissionerate and is operating in Chennai Commissionerate. Sh. Bruce Thadathil, one of the partners of the Customs Broker, is the authorized signatory of the customs broker Liza Sathish, an employee of the Petitioner Company, who is the authorized signatory of the customs broker for their Chennai operations. A report was received from ACIU informing that during investigation of a case pertaining to clearance of raw materials used to manufacture drugs and pharmaceuticals, without import license and assistant drug controller''s clearance, imported by M/s. Antoine and Becouerel Organic Chemical Co., Chennai, it was found that bills of entry were filed in the name of the Petitioner Company and M/s. Evertrust Shipping and Logistics Pvt. Limited. It was established from the statements of Sh. Sohan Chand, Proprietor and IEC holder of the import Firm and Sh. Sandeep Lalwani, Power of Attorney of the Import Firm that they utilized the services of Sh. Sourirajan, who was well experienced in customs clearing field, but did not have a customs broker license or valid customs ID. Card. Sh. Sourirajan used the license of the Petitioner Company and M/s. Evertrust Shipping and Logistics Pvt. Limited with the help of Sh. Satheesan B. Menon (authorized signatory of M/s. The Trading Corporation Pvt. Limited) who was running his own firm M/s. SL Shipping Services along with his wife Liza Sathish (also ''G'' card holder and authorized signatory of the Petitioner Company). Sh. Sourirajan has also utilized the services of Sh. B. karthik, ''H'' Card Holder of the Petitioner Company and Sh. M. Kanna, ''G'' card holder of M/s. Steadfast International. In this connection, statements were recorded from Sh. Sourirajan, Sh. Satheesan B. Menon, Liza Sathish, Sh. B. Karthik, Sh. M. Kannan and Sh. E. Karunakaran (Managing Director and authorized signatory of M/s. Evertrust Shipping Agencies Pvt. Limited)

b. Sh. R. Sourirajan, in his voluntary statement dated 15.4.2013 stated that he did not possess any authorized customs identity card to handle customs documents; that he approached one Sh. Satheesan B. Menon, who was already doing Customs clearance at Chennai Airport in the capacity as Branch manager of CHA, M/s. The Trading Corporation Pvt. Limited; that he utilized his office and banner for clearance of some consignments; that during December 2012, one

Sh. Sandeep contacted him and asked whether he could clear their imports of pharmaceuticals chemicals at Chennai Airport; that he enquired from Sh. Kannan, who was a ''G'' Card holder of CHA, M/s. Steadfast International Pvt. Limited engaged in clearing of similar consignments, about feasibility of smooth clearance of the consignments; that Sh. Kannan assured him that he could handle the shipments very effectively without any ADC formalities; that Sh. Sandeep handed over the documents to him personally and Sh. Karthick, who is an ''H'' card holder of M/s. The Trading Corporation Pvt. Limited collected the documents next day; that Sh. Karthick filed the bills of entry for home consumption and got the Bill assessed; that after assessment, he gave the bills of entry to Sh. Kannan, who effectively carried out Customs examination and obtained out of charge (OOC) order from the shed A.O.; that he did not possess any CHA license; that he utilized Sh. Satheesan B. Menon''s Office and some CHA''s licenses under which his client''s Bills were cleared.

c. M. Kannan, in his voluntary statement, dated 20.4.2013, stated that actually he used to cut the word "verify ADC clearance" in hard copy of open order copy and scribble something like signature and presented the bills pertaining to M/s. Antoine and Becquerel Organic Chemical Co. for examination report; that as the import shed would be crowded and AO/EO would be busy they would not raise any objection. Sh. Satheesan B. Menon, in his voluntary statement dated 18.4.2013 stated that in the year 2005, he started his own firm M/s. SL Shipping Services with his wife Liza Sathish and started customs clearance work using the CHA license of CHA, M/s. The Trading Corporation Pvt. Limited; that the said CHA closed their Chennai operations during May 2012; that subsequently he started using CHA license of M/s. Evertrust Shipping and Logistics Pvt. Limited and used it till 31.3.2013; that after that he got transfer license in the name of M/s. Cappithan Agencies with his wife Liza Sathish as authorized signatory; that he misused the CHA license of M/s. The Trading Corporation Pvt. Limited, M/s. Evertrust Shipping and Logistics Pvt. Limited and M/s. Cappithan Agencies; that he allowed Sh. Sourirajan to utilize his office premises and allowed him to use the CHA license of all the three said CHAs; that he accepted that he abetted and induced Sh. Sourirajan to clear consignments by using the CHA license of the said three CHAs; that Sh. Sourirajan was using, one Sh. Karthick, who was a customs ID. card holder of his Company.

d. Liza Sathish, in her voluntary statement dated 17.4.2013, stated that she joined M/s. Cappithan Agencies as a signing authority in September 2012 and obtained a ''G'' card in March 2013; that M/s. Cappithan Agencies started filing bills from April 2013 onwards; that so far they have filed 5 bills of entry for M/s. Antoine and Becquerel Organic chemical Company, out of which, three bills of entry were cleared by their staff Sh. Karthick and 2 bills of entries were pending for clearance; that the said importer has imported pharmaceuticals chemicals/ drugs, which required a valid import license and ADC''s clearance; that she was aware that the three consignments cleared by them for the said importer were cleared without ADC''s clearance; that as a CHA, she was responsible for clearance of the said consignments without ADC''s clearance; that as a signing authority, she should have advised the importers that the consignments requires proper import license/ADCs clearance; that as all the business promotions were looked after by her husband Sh. Satheesan B. Menon, she did not concentrate much on verification of the documents.

e. In above said facts and circumstances, it appeared that the customs broker allowed unauthorized persons to handle customs clearance work, who in turn used this opportunity to clear the consignments of pharmaceuticals and drugs without ADC''s clearance in contravention of the provisions of the Drug and Cosmetics Act, 1940 and the rules made thereunder and hence, there had been major lapses on the part of the Petitioner, inasmuch as:-

1. The Customs broker allowed Sh. Sourirajan and Sh. Satheesan B. Menon to file documents on their behalf and signed documents for them without verifying the details of the documents and by allowing unauthorized persons to misuse their license, the customs broker transferred their license to third party in contravention of the Regulation 12 of CHALR, 2004. (Now Regulation 10 of CBLR, 2013).

2. The customs broker allowed Sh. Satheesan B. Menon, who was not their employee, to do customs clearance work on their behalf. Hence, the customs broker failed to do business either personally or through an authorized employee, as required under Regulation 13(b) of CHALR, 2004 (now Regulation 11(b) of the CBLR, 2013).

3. Liza Sathish, authorized signatory of the customs broker in her statement accepted that she was aware that the three consignments cleared by them for the said importer were cleared without ADC''s clearance; that as CHA she is responsible for clearance of the said consignments without ADC''s clearance; that as a signing authority, she should have advised the importers that the consignments required proper import license/ADC''s clearance. Hence, the customs broker not only failed to advise their client to comply with the provisions of the Customs Act, 1962, but also failed to bring the matter to the notice of Assistant Commissioner of Customs/Deputy Commissioner of Customs and thus, violated the provisions of Regulation 13(d) of the CHALR, 2004 (now Regulation 11(d) of the CBLR, 2013).

4. The customs broker never tried to verify the antecedents of the importer and relied upon Sh. Satheesan B. Menon and hence, contravened the provisions of Regulation 13(o) of the CHALR, 2004 (now Regulation 11(n) of the CBLR, 2013).

f. In view of the above, it was found that a prima facie case existed against the Customs broker M/s. Cappithan Agencies and if the said customs broker was allowed to continue to operate, it would be detrimental to the interest of revenue and therefore, it was necessary to take immediate action against the said customs broker, to prevent them from further misuse of their licence. Hence, in exercise of the powers conferred under the provisions of Regulation 21 of the

CHALR, 2004 (now Regulation 23 of the CBLR, 2013) M/s. Cappithan Agencies was prohibited from operating in Chennai Customs Commissionerate under the jurisdiction of Chennai Customs Zone, vide order dated 12.07.2013. Subsequently, as per the guidelines of the Board issued vide circular No. 09/2010 dated 8.4.2010, the case was forwarded to the Commissioner of Customs, Cochin (license issuing authority) to initiate further action against the Customs Broker. The Commissioner of Customs, Cochin issued a show cause notice to the Customs Broker under Regulation 20 of CBLR, 2013, vide F. No. S34/07/2013 1 & B Cus. Dated 24.10.2013. In the meanwhile, aggrieved by the prohibition order dated 12.07.2013, the Customs Broker filed W.P. No. 19670/2013, which was disposed of by order dated 24.9.2013, giving liberty to the Customs Broker to submit a representation before the Commissioner of Customs (Imports) to withdraw the said prohibition order and directed the Commissioner of Customs (Imports) to consider the representation. The Petitioner submitted a representation dated 10.10.2013. After going through the records of the case and the oral submissions made by the counsel for the Customs Broker during the personal hearing and their written submissions, since the customs broker had not submitted any evidence to show that they had acted in a bona fide manner as a customs broker, it was beyond doubt that the customs broker had failed to fulfill their obligations under the Regulations 12, 13(b), 13(d) and 13(o) of CHALR, 2004 (now Regulation 10, 11 (b), 11 (d) and 11 (o) of CBLR, 2013), as alleged in the prohibition order dated 12.07.2013 and the Commissioner of Customs (Imports) continued the prohibition of the customs broker''s licence vide order in original No. 22447/2013, dated 12.11.2013 and as against the same the customs broker filed an appeal before the Tribunal and the Tribunal by order dated 19.11.2014 in No. 40781/2014, remanded the matter to the adjudicating authority and ordered to pass an appropriate order after considering the order of the Commissioner of Customs, Cochin. On receipt of a representation from the Customs Broker, a personal hearing was granted to the Customs Broker on 16.4.2015 and after going through the records of the case and the submissions, the prohibition order was affirmed by the Commissioner of Customs, Chennai VIII, by order dated 29.5.2015 in Order in Original No. 38294/2015 for the reasons stated above.

g. Clause 5.2 of Circular No. 09/2010 clearly indicates that the Commissioner of Customs who had authorized the CHA to operate on ''C form intimation at a Customs Station, may take action in deserving cases under Regulation 21 of CHALR, 2004 for prohibiting the working of such defaulting CHA in any section of the Custom House/Custom Station. Since the Petitioner has not fulfilled their obligations under the above said regulations, the impugned order, confirming the prohibition order, has been passed. Without availing alternative remedy of filing an appeal, the Petitioner has straight away approached this court by way of this Writ Petition. In such circumstances, this Writ Petition is liable to be dismissed.

4. The learned counsel for the Petitioner contended that the impugned order has been passed without jurisdiction as the licensing authority itself has permitted

the Petitioner to operate the license and has only imposed a penalty of Rs. 10,000/- and that the Respondent cannot go beyond more than the punishment that is contemplated by the Customs Commissionerate, who had issued the licence and that if the license issuing authority does not revoke the license, the prohibitory order ought to be withdrawn and as the licensing authority has not revoked the license, the Respondent has no jurisdiction to continue the prohibition and prayed for quashing of the impugned order.

5. The learned Standing Counsel for the Respondent submitted that the Petitioner/customs broker allowed unauthorized persons to handle customs clearance work, who in turn used this opportunity to clear the consignments of pharmaceuticals and drugs without ADC''s clearance in contravention of the provisions of the Drug and Cosmetics Act, 1940 and the rules made thereunder and hence, there had been major lapses on the part of the Petitioner and the investigation revealed that a prima facie case existed against the Petitioner and if the Petitioner was allowed to continue to operate, it would be detrimental to the interest of revenue and therefore, it was necessary to take action against the Petitioner to prevent them from further misuse of their licence and that in exercise of powers conferred under the provisions of Regulation 21, the Petitioner was prohibited from operating in the jurisdiction of Chennai Customs Zone and prayed for dismissal of this Writ Petition.

6. This court heard and considered the submissions made by the learned counsel on either side and also perused the materials placed on record.

7. The facts in a nutshell are that the Petitioner/Customs Broker, having license No. 102, was acting as a customs house agent for various importers. On investigation, during the year 2012-2013, the Respondent Department found that M/s. Antonie and Becouerel Organic Chemical Company had cleared consignments without import licence and without ADC''s clearance and hence, the Respondent by order dated 12.7.2013, prohibited the Petitioner from working as a Customs House Agent. On the representation of the Petitioner, the Respondent again passed an order dated 12.11.2013, continuing the prohibition order and in the appeal, the Tribunal passed final order dated 15.10.2014, directing the Respondent to pass necessary orders. In the meantime, as per the order of the Commissioner of Customs, Cochin, the Petitioner had paid penalty of Rs. 10,000/-. Thereafter, the Respondent passed the impugned order dated 29.5.2015, continuing the prohibition order.

8. The ground, on which the impugned order, prohibiting the Petitioner from acting as a Customs House Agent, has been passed, is that the Petitioner had acted in contravention of the relevant provisions of the Act, Rules and Regulation, as detailed hereinafter.

9. It is seen from the averments made in the affidavit and in the counter affidavit that on investigation and on the basis of the statements made from the concerned parties, the Respondent Department found that the Petitioner/

Customs Broker allowed unauthorized persons to handle customs clearance work, who in turn misused the opportunity to clear the consignments of pharmaceuticals and drugs, without import licence and without ADC''s clearance, in contravention of the provisions of the Drug and Cosmetics Act, 1940 and the Rules made thereunder and hence, there had been major lapses on the part of the Petitioner and holding so, the Respondent Department prohibited the Petitioner from acting as the Customs house Agent.

10. At this juncture, it is relevant to extract the necessary provisions of the Act, Rules and Regulations, relied on by the Respondent, hereunder:-

(i) Clause 5.2 of the Circular No. 9/2010-Cus , dated 8.4.2010 reads as under:-

(iii) Suspension or revocation against CHAs operating on ''C form intimation basis:-

"5.2 Further, it is also clarified that the Commissioner of Customs at a customs station who had authorized a CHA to operate on ''C form intimation, should inform the details of violations to the Commissioner of Customs at the customs station from where the CHA licence was issued for such CHA, so that necessary action for suspension or revocation of CHA licence, could be initiated by him. This would avoid duplication and ensure uniformity in adjudication of a case against a CHA in suspension or revocation proceedings by the Customs field formations. However, the Commissioner of Customs, who had authorized a CHA to operate on ''C form intimation at a customs station, may take action in deserving cases under regulation 21 of CHALR 2004 for prohibiting the working of such defaulting CHA in any section of the Customs House/Customs Station."

(ii). Regulation 12 of the CHALR, 2004 (now Regulation 10 of the CBLR, 2013) reads as under:-

"Every licence granted or renewed under these regulations shall be deemed to have been granted or renewed in favour of the licensee and no licence shall be sold or other transferred."

(iii) Regulation 13(b) of the CHALR, 2004 (now Regulation 11(b) of the CBLR, 2013), reads as under:-

"A CHA shall transact business either personally or through an employee duly approved by the Deputy Commissioner of Customs or Assistant Commissioner of Customs."

(iv) Regulation 13(d) of the CHALR, 2004 (now Regulation 11(d) of the CBLR, 2013) reads as under:-

"A CHA shall advise his client to comply with the provisions of the Act and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs."

(v) Regulation 13(o) of the CHALR, 2004 (now Regulation 11(n) of the CBLR,

2013) reads as under:-

"A CHA shall verify antecedent, correctness of Importer Exporter Code (IEC) Number, identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents data or information."

11. It was found, on the investigation and the statements made from the parties concerned that (1) the Petitioner/the Customs broker allowed Sh. Sourirajan and Sh. Satheesan B. Menon to file documents on their behalf and signed documents for them, without verifying the details of the documents and by allowing unauthorized persons to misuse their license, the customs broker transferred their license to third party, in contravention of the Regulation 12 of CHALR, 2004. (Now Regulation 10 of CBLR, 2013); (2) the Petitioner allowed Sh. Satheesan B. Menon, who was not their employee, to do customs clearance work on their behalf and hence, the customs broker failed to do business either personally or through an authorized employee, as required under Regulation 13(b) of CHALR, 2004 (now Regulation 11(b) of the CBLR, 2013), (3) the Petitioner/customs broker not only failed to advise their client to comply with the provisions of the Customs Act, 1962, but also failed to bring the matter to the notice of Assistant Commissioner of Customs/Deputy Commissioner of Customs and thus, violated the provisions of Regulation 13(d) of the CHALR, 2004 (now Regulation 11(d) of the CBLR, 2013) and (4) the Petitioner/customs broker never tried to verify the antecedents of the importer and relied upon Sh. Satheesan B. Menon and hence, contravened the provisions of Regulation 13(o) of the CHALR, 2004 (now Regulation 11 (n) of the CBLR, 2013).

12. Clause 5.2 of Circular No. 09/2010 clearly indicates that the Commissioner of Customs, who had authorized the CHA to operate on ''C form intimation at a Customs Station, may take action under Regulation 21 of CHALR, 2004 for prohibiting the working of such defaulting CHA in any section of the Custom House/Custom Station. Therefore, the impugned order of the Respondent, continuing the prohibition of the licence of the Petitioner, is well within the ambit of law.

13. The Petitioner was given sufficient opportunity of furnishing a representation, written submissions and being heard. However, there is no evidence produced by the Petitioner to show that they fulfilled their obligations under the said provisions of Act, Rules and Regulations. The payment of penalty of Rs. 10,000/- by the Petitioner would go to show the acceptance of the order of the Respondent.

14. Therefore, it is finally concluded that in contravention of the above said provisions of the Act, Rules and Regulations, the Petitioner/custom brokers allowed third parties to use their licence and allowed third parties, who was not their employee, to do customs clearance work on their behalf and the Petitioner not only failed to advise their client to comply with the provisions of the Act, but also failed to bring the matter to the notice of the Assistant Commissioner of

Customs/Deputy Commissioner of Customs and the Petitioner never tried to verify the antecedents of the importer and relied upon third parties and ultimately, failed to act in a bona fide manner as per the said provisions.

15. The very purpose of granting a licence to a person to act as a Customs House Agent is for transacting any business relating to the entry or departure of conveyance or the import or export of goods in any customs station. For that purpose, under Regulation 9 necessary examination is conducted to test the capability of the person in the matter of preparation of various documents determination of value procedures for assessment and payment of duty, the extent to which he is conversant with the provisions of certain enactments, etc. Therefore, the grant of licence to act as a Custom House Agent has got a definite purpose and intent. On a reading of the Regulations relating to the grant of licence to act as CHA, it is seen that while CHA should be in a position to act as agent for the transaction of any business relating to the entry or departure of conveyance or the import or export of goods at any customs station, he should also ensure that he does not act as an Agent for carrying on certain illegal activities of any of the persons who avail his services as CHA. In such circumstances, the person playing the role of CHA has got greater responsibility. The very description that one should be conversant with the various procedures including the offences under the Customs Act to act as a Custom House Agent would show that while acting as CHA, he should not be a cause for violation of those provisions. A CHA cannot be permitted to misuse his position as CHA by taking advantage of his access to the Department. The grant of licence to a person to act as CHA is to some extent to assist the Department with the various procedures such as scrutinizing the various documents to be presented in the course of transaction of business for entry and exit of conveyances or the import or export of the goods. In such circumstances, great confidence is reposed in a CHA. Any misuse of such position by the CHA will have far reaching consequences in the transaction of business by the customs house officials. Therefore, when, by such malpractices, there is loss of revenue to the custom house, there is every justification for the Respondent in treating the action of the Petitioner Applicant as detrimental to the interest of the nation and accordingly, final order of revoking his licence has been passed.

16. In view of the above discussions and reasons and the finding that the Petitioner has not fulfilled their obligations under above said provisions of the Act, Rules and Regulations, the impugned order, confirming the order for continuation of prohibition of the licence of the Petitioner is sustainable in law, which warrants no interference by this court. Accordingly, this Writ Petition is dismissed. No costs. Consequently, the connected MP is closed.