
(1994) 02 MAD CK 0053

In the Madras High Court

Case No : Writ Petition No. 17363 of 1994 and Contempt Application No. 369/94

East West Freight Carriers (P) Ltd.

APPELLANT

Vs

Collr. of Customs, Madras

RESPONDENT

Date of Decision : 28-02-1994

Acts Referred:

Central Excise Rules, 1944 — Rule 173Q, 57A, 57C, 57D, 57G
Central Excises and Salt Act, 1944 — Section 11A

Citation : (1995) 77 ELT 79

Hon'ble Judges : Shivraj V. Patil, J

Bench : Single Bench

Advocate : Shri N.R. Chandran for M/s. S.G. Parab and K. Ilango, for the Appellant; Shri C.A. Sundaram, Addl. C.G.S.C., for the Respondent

Judgement

Shivraj V. Patil, J.—Although W.M.P. Nos. 27407/1994 and 26382 of 1994 in W.P. No. 17363 of 1994 are posted today, the writ petition itself is taken up for final hearing with the consent of the learned counsel for the parties.

2. Heard the learned counsel for the parties accordingly.

3. The petitioner in this writ petition has questioned the validity and correctness of the impugned order dated 26-9-1994 passed by the respondent and sought for quashing the same.

4. Shri N. R. Chandran, the learned senior counsel for the petitioner contended that the impugned order said to have been passed under Regulation 21(2) of the Customs House Agents Licensing Regulations, 1984, for short "the Regulations", is unsustainable on the face of it. He submitted that under Regulation 21 of the Collector may subject to the provisions of Regulation 23 suspend or revoke the licence of a Customs House Agent in so far as the jurisdiction of the Collector is concerned, and also order for forfeiture of security amount on any one of the grounds (a) to (c) mentioned in Regulation 21(1). Under Regulation 21(2) the Collector may in appropriate case where immediate action is necessary suspend

the licence pending enquiry.

5. He submitted that the impugned order does not indicate anywhere that the Collector had formed an opinion to state that immediate action was necessary to suspend the licence to the petitioner pending enquiry contemplated for the contraventions. The learned counsel attacked the order of taking action under Regulation 21(1) on few more grounds. In my opinion they are not necessary to be dealt with as in the case on hand the impugned order challenged relates to suspension under Regulation 21(2).

6. Shri C. A. Sundaram, Additional Central Government Standing Counsel argued in support and justification of the impugned order. He pointed out that grave irregularities were committed by the petitioner as can be seen from the impugned order itself. The Collector looking into the grave irregularities and contraventions committed by the petitioner and on finding that there was prima facie case against the petitioner has passed the impugned order suspending the licence pending enquiry under Regulation 21(2). He submitted that immediate action was warranted looking to the serious irregularities and contraventions said to have been committed by the petitioner as can be seen from the impugned order.

7. I have considered the submissions made by the learned counsel for the parties. The power of the Collector to take action under Regulation 21(1) is not questioned in the writ petition. It cannot also be disputed that under Regulation 21(2) the Collector has the power to suspend the licence of a Customs House Agent when enquiry against such agent is pending or contemplated where immediate action is necessary.

8. In my opinion the power to suspend the licence is to be exercised where immediate action is necessary. A plain reading of the impugned order does not show that the Collector applied his mind to consider whether immediate action was necessary in the case. The order also does not state that the licence was suspended because immediate action was necessary. I do not express here one way or the other as to whether on the facts of the case immediate action was necessary or was not necessary because it is for the Collector to take decision in that regard.

9. In the absence of any indication that there was application of mind by the Collector on the aspect as to whether immediate action was necessary, in my opinion, the impugned order cannot be sustained. The Collector gets jurisdiction to suspend the licence in cases where immediate action is necessary. In this view I consider it just and appropriate to pass the following order :-

The writ petitions allowed and the impugned order dated 26-9-1994 issued by the respondent is quashed. It is open to the respondent if so desired to exercise the power u/s 21(2) and pass appropriate orders.

10. The learned counsel for the applicant in the contempt application states that

the contempt application may be dismissed as not pressed. Accordingly it is dismissed as not pressed.