(2014) 08 MAD CK 0293

In the Madras High Court

Case No : Writ Petition (MD) No. 12623 of 2010 and M.P. (MD) Nos. 1 and 2 of 2010

Smile Shipping Services — APPELLANT

Vs

Commissioner of Customs — RESPONDENT

Date of Decision : 05-08-2014

Acts Referred:
Customs Act, 1962 — Section 129(1)

Citation : (2014) 308 ELT 646

Hon'ble Judges : S. Nagamuthu, J

Bench : Single Bench

Judgement

S. Nagamuthu, J.—The petitioner is a partnership firm. The Deputy Commissioner of Customs, CHA, Customs House, Chennai, issued a licence to the petitioner for Customs House Agent under Licence No. TUT-52/2005/CHA, dated 27-12-2004. In the course of the business of the petitioner, the petitioner filed two shipping bills on behalf of one M/s. Dhanalakshmi Exports, Chennai, for exporting Free Flowing Iodized Salt, during the month of December, 2009. The said consignments were to be exported through the Tuticorin Port Trust. But, the officers of the Directorate of Revenue Intelligence, Tuticorin, on 24/25-12-2009, intercepted the goods and on a detailed examination, it was found that in the gunny bags containing iodized salt, polythene sacs containing Ketamine Hydrochloride were concealed in the iodized salt. They were recovered. The worth of seized Ketamine Hydrochloride was valued at Rs. 1,50,00,000/-. Based on these allegations, the Commissioner of Customs House, Tuticorin, by his proceedings in C. No. VIII/13/47/2004-CHA, dated 16-3-2010, suspended the Customs House Licence issued to the petitioner, in terms of Regulation 20(2) of the Customs House Agents Licensing Regulations, 2004. Challenging the said order, the petitioner is before this Court with this writ petition. I have heard the learned counsel for the petitioner and the learned counsel appearing for the respondent and I have also perused the records, carefully.

2. The learned counsel for the petitioner would submit that there was no immediate action to suspend the licence and thus the impugned order has been passed in the absence of any action which is immediately necessary, as provided in sub-regulation (2) of Regulation 20. He would further submit that after passing the order of suspension, no further action was taken under Regulation 22 of the Regulations and thus the order impugned has been allowed to be in force from 16-3-2010, in an arbitrary manner. Therefore, according to the learned counsel, the impugned order is liable to be set aside.

3. In the counter filed by the respondent, it is stated that anyone who is aggrieved by the order made under Regulation 20 of the Regulations has to file only an appeal under sub-regulation (8) of Regulation 28 before the Customs, Central Excise and Service Tax Appellate Tribunal, established under Section 129(1) of the Customs Act. In this case, according to the learned counsel for the respondent, the petitioner has not made any appeal at all to the Tribunal and thus the present writ petition is not at all maintainable. It is further contended that sub-regulation (3) of Regulation 20 was inserted by means of an amendment with effect from 8-4-2010; whereas the impugned order of suspension was passed on 16-3-2010 and as per the unamended Regulation, as it stood in force before 8-4-2010, there was no question of affording opportunity to the agent and to take a decision either to revoke the suspension or to continue the same. In the counter, it is further elaborated as to how the necessity arose to take action under sub-regulation (2) of Regulation 20, Thus, according to the respondent, the writ petition is liable to be dismissed.

4. I have considered the above submissions.

5. Since the question of maintainability of the writ petition is raised in the counter filed by the respondent, let me examine the same, first. Admittedly, as per Regulation 22(8), any Customs House Agent aggrieved by an order under sub-regulation (2) of Regulation 20 has got right of appeal to the Tribunal. But, in this case, the petitioner has not chosen to file any appeal. But, the learned counsel for the petitioner would submit that the petitioner did not file appeal in the Tribunal, because the impugned order was passed in an arbitrary manner, without following the principles of natural justice. He would further submit that the Hon''ble Supreme Court as well as this Court have been consistently holding that where there is violation of principles of natural justice, writ petitions are to be entertained without driving the party concerned to go for the alternative relief before a different forum. Thus, according to the learned counsel, this writ petition is maintainable.

6. Though attractive, in my consideration, the said submission of the learned counsel for the petitioner is not persuasive at all. As rightly pointed out by the learned counsel for the respondent, the Regulations were amended with effect from 8-4-2010, in which, sub-regulation (3) was added to Regulation 20, which reads as follows:

"(3) Where a licence is suspended under sub-regulation (2), notwithstanding the procedure specified under regulation 22, the Commissioner of Customs may, within fifteen days from the date of such suspension, give an opportunity of hearing to the Customs House Agent whose licence is suspended and may pass such order as he deems fit either revoking the suspension or continuing it, as the case may be, within fifteen days from the date of hearing granted to the Customs House Agent."

Since this sub-regulation (3) was not there originally in the Regulations before 8-4-2010, the question of affording any opportunity, immediately after passing the order of suspension, within a time frame and to pass a further order within a further time frame, either continuing the suspension or revoking the same, did not arise at all. In short, there was neither pre-decisional nor post-decisional right of hearing contemplated under Regulation 20. In such view of the matter, I hold that there was no violation of principles of natural justice, as it is sought to be argued by the learned counsel for the petitioner. Apart from that, there is no explanation offered by the petitioner as to why they did not choose to file appeal under sub-regulation (8) of Regulation 22. In view of these facts, I find that the writ petition is not maintainable and it is for the petitioner who should have gone on appeal to the Tribunal to work out efficacious remedy available to him.

7. Turning to sub-regulation (2) to Regulation 22, this Regulation has not been amended. As per this Regulation, within a reasonable time, after the suspension of licence, the Customs House Agent should be afforded an opportunity by issuing notice, he should be heard and based on the same, within the time stipulated, a final order is to be passed under sub-regulation (7) of Regulation 22, thereby either revoking the licence or by passing any other suitable order.

8. In this case, unfortunately, though the impugned order was passed on 16-3-2010, the Commissioner of Customs, has not passed final order under Regulation 22 for the past four years. Absolutely, no reason has been offered by way of explanation for this inaction on the part of the Commissioner in the counter. Though the counter was filed on 22-11-2010, no reason has been stated even during the course of argument by the learned counsel for the respondent as to why no order has been made under Regulation 22, so far. That is the reason why I have to make an observation that the conduct of the Commissioner of Customs in this matter, though the allegations against the petitioner appear to be serious, cannot be appreciated. The learned counsel for the petitioner would submit that the suspension of licence may be revoked and the Commissioner may be directed to hold an enquiry and pass appropriate orders under Regulation 22 of the Regulations. In my considered opinion, that course is not possible and the only course which could be adopted is to issue a direction to the Commissioner to hold appropriate enquiry and pass a final order under sub-regulation (7) of Regulation 22 within a period of six weeks from the date of receipt of a copy of this order. It is made clear that this Court has not expressed any opinion as to whether the suspension order is justifiable or the same

requires to be revoked. In the result, the writ petition is dismissed as not maintainable, however, with a liberty to the petitioner to file appeal before the Tribunal, if so advised and if any such appeal is filed, the time spent on this writ petition from 8-7-2010 till today shall be excluded while competing the period of limitation, if any, for the said purpose. The Commissioner of Customs, Tuticorin Port, is directed to hold an enquiry, afford sufficient opportunity to the petitioner and pass final order, in accordance with law, under sub-regulation (7) of Regulation 22, within a period of six weeks from the date of receipt of a copy of this order or on production of a copy of this order. No costs. Connected miscellaneous petitions are also dismissed.

