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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ WRIT PETITION (CIVIL) NO. 2654/2013

Date of decision: 5th September, 2013

LOGIC TRANSWARE INDIA PVT LTD.

..... Petitioner

Through Mr. Rohit Kapur, Advocate.

versus

COMMISSIONER OF CUSTOMS

..... Respondent

Through Mr. Kamal Nijhawan, Sr. Standing
Counsel with Mr. H.K. Sharma, Dy.
Commissioner (Customs).

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

SANJIV KHANNA, J. (ORAL):

The petitioner by way of this writ petition has challenged order dated 24th January, 2013 passed by the Commissioner of Customs (Imports and General Commissionerate), New Customs House, New Delhi. By the impugned order the petitioner has been prohibited from transacting business under Regulation 9(2) of the Customs House Agents Licensing Regulations, 2004 within the jurisdiction of Delhi Commissionerate with immediate effect. The petitioner has also been

directed to surrender his original licence and cards issued to them.

2. During the course of hearing, learned counsel for the respondent has stated that the card and the licence were required to be surrendered for deletion of the endorsement made on the licence to the effect that the petitioner can transact business under Regulation 9(2) in the jurisdiction of Delhi Commissionerate. Thereafter, licence and card would be returned to the petitioner.

3. The petitioner has challenged the said order on two grounds. Firstly, no hearing or show cause notice was granted/issued to the petitioner and there has been violation of principles of natural justice. Secondly, it is submitted that order of prohibition under Regulation 21 can be only in respect of one or more sections of the Customs House and not the entire Commissionerate. The contention of the respondents, on the other hand, is that Regulation 21 is an independent regulation and the procedure prescribed in Regulation 22 is not applicable to Regulation 21. Regulation 22 is applicable only when proceedings are initiated for suspension and revocation of licence and not when an order of prohibition is passed in Regulation 21.

4. Regulations 20, 21 and 22 of the 2004 Regulations read as under:-

“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 anywhere else which in the opinion of the Commissioner renders him unfit to transact any business in the Customs Station.

(2) Notwithstanding anything contained in sub-regulation (1), the Commissioner of Customs may, in appropriate cases where immediate action is necessary, suspend the licence of a Customs House Agent where an enquiry against such agent is pending or contemplated.

21. Prohibition:- Notwithstanding anything contained in regulation 22, the Commissioner of Customs may prohibit any Customs House Agent from working in one or more sections of the Customs Station, if he is satisfied that such Customs House Agent has not fulfilled his obligations as laid down under regulation 13 in relation to work in that section or sections.

22. Procedure for suspending or revoking licence under Regulation 20.-(1) The Commissioner of Customs shall issue a notice in writing to the Customs House Agent stating the grounds on which it is proposed to suspend or revoke the licence and requiring the said Customs House Agent to submit, within such

time as may be specified in the notice, not being less than forty-five 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 House Agent desires to be heard in person by the said Deputy Commissioner of Customs or Assistant Commissioner of Customs.

(2) The Commissioner of Customs may, on receipt of the written statement from the Customs House Agent, or where no such statement has been received within the time-limit specified in the notice referred to in sub-regulation (1), direct the Deputy Commissioner of Customs or Assistant Commissioner of Customs to inquire into the grounds which are not admitted by the Customs House Agent.

(3) The Deputy Commissioner of Customs or Assistant Commissioner of Customs shall, in the course of inquiry, consider such documentary evidence and take such oral evidence as may be relevant or material to the inquiry in regard to the grounds forming the basis of the proceedings, and he may also put any question to any person tendering evidence for or against the Customs House Agent, for the purpose of ascertaining the correct position.

(4) The Customs House Agent shall be entitled to cross-examine the persons examined in support of the grounds forming the basis of the proceedings, and where the Deputy Commissioner of Customs or Assistant Commissioner of Customs declines to examine any person on the grounds that his evidence is not relevant or material, he shall record his reasons in writing for so doing.

(5) At the conclusion of the inquiry, the Deputy Commissioner of Customs or Assistant

Commissioner of Customs shall prepare a report of the inquiry recording his findings.

(6) The Commissioner of Customs shall furnish to the Customs House Agent a copy of the report of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, and shall require the Customs House Agent to submit, within the specified period not being less than sixty days, any representation that he may wish to make against the findings of the Deputy Commissioner of Customs or Assistant Commissioner of Customs.

(7) The Commissioner of Customs shall, after considering the report the inquiry and the representation thereon, if any, made by the Customs House Agent, pass such orders as he deems fit.

(8) Any Customs House Agent aggrieved by any decision or order passed under regulation 20 or sub-regulation (7) of regulation 22, may prefer an appeal under section 129A of the Act to the Customs, Central Excise and Service Tax Appellate Tribunal established under sub-section (1) of section 129 of the Act.”

5. Sub-clause (1) to Regulation 20 stipulates that the Commissioner of Customs may subject to provisions of Regulation 22 revoke a licence of Customs House Agent or order for forfeiture of part or whole of the security etc. Sub-clause (2) of the Regulation stipulates that Commissioner of Customs, may in appropriate cases, where immediate action is necessary, within 15 days of receipt of report from investigating authority, suspend a licence.

6. Regulation 22 deals with procedure for suspension or revoking of licence. Sub-clause (1) thereof prescribes the applicable procedure and mandates issue of notice, written statement of defence by the Customs House Agent and hearing. However, proviso to sub-clause (1) states that the procedure in Regulation 22(1) shall not apply to sub-regulation (2) of Regulation 22, i.e., cases of suspension. Thus, the procedure prescribed in Regulation 22(1) would not apply when the authorities are required to take immediate action to suspend the licence, pending decision whether or not to revoke the licence. The proviso, therefore, puts action under sub-regulation (2) to Regulation 20 in the same position as action contemplated under Regulation 21. In both situations, procedure stipulated in Regulation 22(1) is not applicable and need not be followed. In these circumstances, we do not appreciate and accept the contention of the respondents that Regulation 21 specifically states that the procedure in Regulation 22 will not be applied and, therefore, post-decisional hearing is not required or mandated. The same or identical position exists as far as suspension of licence under Regulation 20(2) is concerned. The aforesaid similarity in the two provisions, i.e., Regulations 21 and 20(2) becomes relevant because a Division Bench of the Delhi High Court in *International Cargo Services versus Union of India*, 2006 (193) ELT 546 (Delhi) has held:-

“7. The principles of natural justice have twin ingredients. Firstly, the person likely to be adversely effected by the action of the authorities should be given notice to show cause or granted reasonable opportunity of being heard in consonance with the maxim audi alteram partem. Secondly, the order so passed by the authorities should give reasons for arriving at any conclusion showing proper application of mind. Violation of either of these principles normally would render an order particularly quasi-judicial in nature invalid. Violation of principles of natural justice is violation of basic rule of law and would invite judicial chasticism. However, this rule is not without exceptions. Of course, the exception to such a rule are rare. Where the legislative scheme of provisions of a statute suggest that intent of the legislature is to take emergent action, in that event and subject to fulfillment of ingredients of the provisions, an order could be passed without affording pre-decisional hearing and an expeditious post-decisional hearing may amount to substantial compliance with the basic rule of law. Regulation 20 (1) empowers the Commissioner of Customs to revoke the license of an agent and even order forfeiture of part or whole security. This action could be taken restricted to the grounds spelled out in the regulation itself. This power can hardly be invoked by the authorities for instantly revoking a license while under 20 (2) of the regulations the same authority may in appropriate cases where immediate action is necessary suspend the license of the agent where enquiry against such agent is pending or contemplated. The emphasis is on the expression 'immediate action is necessary' and 'enquiry against such agent is pending or contemplated'. Furthermore, this regulation opens with non-obstante expression 'notwithstanding anything contained in sub-regulation (1)'. Thus, provisions of sub-

regulation (2) would take precedence and recourse thereto can be taken despite the pendency of proceedings for revocation of license. In normal course, the procedure prescribed under Regulation 22 has to be followed by the authorities. In a case where immediate or emergent circumstances do not exist, notice should be issued to the agent, before authorities could pass an order in exercise of their powers under Rule 20 (1) or 21. However, this may not be quite true in an emergent situation. Where the authorities are of the considered view that the facts and circumstances disclose sufficient grounds for invoking emergent provisions and it is absolutely essential to suspend the license of the agent, in public interest, there the authorities may do so without serving a notice on the agent, but at the same time ensuring that post-decisional hearing is granted to the agent and the matter is considered with utmost expeditiousness. The rules of natural justice would have to be read into regulation 20 (2) but with the proviso that post-decisional hearing in emergent situation and subject to the satisfaction of the competent authority would be granted at the very first possible opportunity. Wherever a license is suspended without hearing, the authorities would be under obligation to grant post-decisional hearing to the agent immediately thereafter and ensure that the authorities after hearing the concerned party and upon due application of mind consider the matter whether the order of suspension should continue during the period of enquiry or otherwise. Such an approach would be just, fair and would further the object sought to be achieved by these provisions. The expression 'immediate' has to be harmoniously read and construed with other provisions including the provisions of regulations 20 and 22. The period specified in regulation 22 would have the effect of rendering the expression 'immediate'

ineffective and meaningless. Therefore, applying the principle of harmonious construction, the provisions will have to be given their true and correct meaning and they should be permitted to operate in the field in which they are intended to operate by the legislature, so as to avoid any conflict between the language of these two provisions. An order of suspension is bound to have serious consequences upon the business of the agent and tantamounts to practically closing the business of the agent. As such to permit an order of suspension, even passed in emergent situations, to continue for indefinite period without hearing the agent would definitely be infringement of the principles of natural justice and basic rule of law as well. The only way in which both these provisions can operate without conflict is to hold that an order of suspension in 'emergent' situation can be passed for recorded reasons without hearing the agent at the first instance but should be granted opportunity of showing cause immediately thereafter and the authorities are expected to apply their mind whether the order of suspension so passed should be permitted to continue or not. This power is an exception to the normal rule of audi alteram partem and therefore recourse to it should be only in the case of immediate action in public interest or to prevent breach of statutory provisions, regulations or conditions of license, failing which serious consequences are bound to flow.

8. The authorities with the above exception are expected to adhere to the principles of natural justice wherever they exercise their powers for revoking and/or suspending a license in consonance with the provisions of Regulation 20 read with 22.”

7. For the purpose of record, we also note that Regulation 21

quoted and reproduced in the said decision and paragraph 7 thereof specifically refers to the Regulation 21. Therefore, in our view, the ratio expressed in paragraph 7 of the judgment in the case of ***International Cargo Service*** (supra) will equally apply to the case of prohibition order under Section 21. An order of prohibition is equally penal and entails in similar adverse consequences as in a case of suspension. An order of prohibition can be perceived to be more severe and stringent as it is not a temporary or of interim nature. In ***International Cargo Service*** (supra), the Division Bench thereafter referred to the judgments of the Supreme Court in ***Rattan versus Managing Committee***, (1993) 4 SCC 10, ***Maneka versus Union of India***, (1978) 1 SCC 248, ***State of Punjab versus Gurdayal***, AIR 1980 SC 319 and ***M/s Raj Restaurant and Another versus Municipal Corporation of Delhi***, (1982) 3 SCC 338 and has directed as under:-

“13. Where certain provisions of a statute do not grant pre-order hearing to the effected party, while in some other provisions of the same statute, sub-hearing is specifically provided for. The result would be that prior provisions exclude the application of audi alteram partem by necessary implication. If nothing else, this is certainly a weighty consideration to be taken into account along with civil consequences, which would entail from such action. In the case of Mohinder Singh Gill v. [The Chief Election](#)

[Commissioner, New Delhi- AIR 1978 SC 851](#),
the Supreme Court held as under:-

"We have been told that wherever the Parliament has intended a hearing it has said so in the Act and the rules and inferentially where it has not specified it is otiose. There is no such sequitur. The silence of a statute has no exclusionary effect except where it flows from necessary implication."

14. We have already noticed that plain reading of the regulation 20 (2) would show that it is an emergent provision and its very purpose may be frustrated if the hearing is to be granted without exception and irrespective of the compelling facts and circumstances of the case, justifying passing of such an order. In the present case, no circumstances existed which would suggest invoking of this emergency provisions without taking recourse to the principle of natural justice. Furthermore, the order does not state, much less specifically give reasons which show proper application of mind by the concerned authorities for arriving at such a conclusion. Even administrative orders should be supported by proper reasons and application of mind (*Union of India v. E.G. Nambudiri- AIR 1991 SC 1216*). Thus, on both these accounts, the petitioner is entitled to succeed.

8. Following the said judgment, the respondents themselves have issued Circular No. 9/2010-Customs dated 8th April, 2010 stating that where immediate suspension action is required under Regulation 20(2), there is no need to follow the procedure prescribed in Regulation 22, but it has been decided by the Board that post-decisional hearing should be given in all such cases so that errors apparent, if any, can be

corrected and an opportunity of hearing is given to the aggrieved party. The aforesaid provision will be equally applicable to emergent and immediate action, which are taken under Regulation 21. In these circumstances, we are leaving the second contention open as the petitioner can raise the said objection before the authorities concerned in the post-decisional hearing.

9. Following the decision in *International Cargo Services* (supra), Delhi High Court in several cases has been directing post-decisional hearings. In these circumstances, we feel that the petitioner is entitled to post-decisional hearing also and then the respondents should pass a speaking order.

10. At this stage, learned counsel for the respondents has pointed out that show cause notice for revocation of licence has been issued by the Commissionerate at Pune. It is stated by the counsel for the petitioner that they have not received the said notice. Copy of show cause notice has been furnished to the counsel for the petitioner today in the Court and the same will be treated as due service on the petitioner. The petitioner may file reply to the said notice within a period of thirty days or earlier and thereupon the appropriate authority will dispose of the show cause notice within a period of thirty days from receipt of the reply.

11. In view of the aforesaid position, we feel that the present writ

petition can be disposed of by directing the competent authority at Pune to dispose of the show cause notice for revocation within thirty days from the date copy of the reply is received from the petitioner. In case the authority does not dispose of the show cause notice within the said period of thirty days, the order of prohibition impugned in the present writ petition will be deemed to be suspended/revoked. The order of revocation, if passed, can be made subject matter of appeal in terms of the regulations. The writ petition is accordingly disposed of.

Copy of this order be given dasti to the learned counsel for the parties under signature of the Court Master.

SANJIV KHANNA, J.

SANJEEV SACHDEVA, J.

SEPTEMBER 05, 2013
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