

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 10.11.2014

+ W.P.(C) 7691/2014 & CM Nos.18104/2014 & 18105/2014

M/S PREMIER SHIPPING AGENCIES

..... Petitioner

versus

THE COMMISSIONER OF CUSTOMS

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr P.V. Saravan Raja.

For the Respondents : Mr Kamal Nijhawan, Sr. St. Counsel.

CORAM:-

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J (ORAL)

CM No.18105/2014

Allowed, subject to all just exceptions.

The application stands disposed of.

W.P.(C) 7691/2014 & CM No.18104/2014

1. The petitioner has filed the present petition seeking quashing of the order dated 27/29.08.2014 (hereafter the 'impugned order') passed by the respondent - Commissioner of Customs (Imports & General), New Custom House, New Delhi in exercise of powers under Regulation 23 of the Customs Brokers Licensing Regulations, 2013 (hereinafter 'CBLR, 2013'). By the impugned order, the permission granted under Regulation 9(2) of the Customs House Agents Licensing Regulations, 2004 (hereafter

‘CHALR, 2004’) was revoked and the petitioner was prohibited to continue working as Custom Broker at Delhi Customs Stations.

2. The learned counsel for the respondent contended that an appeal would lie before the Customs, Central Excise and Service Tax Appellate Tribunal (hereafter ‘CESTAT’) against the impugned order by virtue of Regulation 21 of CBLR 2013. This is disputed by the learned counsel for the petitioner who has referred to a decision of CESTAT, Mumbai in the case of **M/s. S.N.M. Agency v. CC Mumbai: Appeal No.C/89661/13, decided on 13.01.2014.** By the said decision, CESTAT, Mumbai has, in effect, held that Regulation 21 of the CBLR 2013 is *ultra vires* of Section 146(2) of the Customs Act, 1962 (hereafter the ‘Act’) and an appeal would only lie against an order of suspension or revocation of a licence.

3. At this stage, it is necessary to refer Regulation 21 of CBLR, 2013, which reads as under:-

“21. Appeal by Customs Broker.- A Customs Broker, who is aggrieved by any order passed by the Commissioner of Customs under these regulations, 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.”

4. Plainly, Regulation 21 of CBLR, 2013 provides for an appeal against any order that may be passed by the Commissioner of Customs and appeals under Regulation 21 of CBLR, 2013 are not limited to orders of revocation of a licence under Regulation 18 of CBLR, 2013 or an order of suspension of licence under Regulation 19 of CBLR, 2013. At this stage, it may also be necessary to refer the provisions of Section 146(2) of the Act, which *inter*

alia provides for power of the Central Board of Excise and Customs to make regulations for regulating the business of custom agents. The said Section is quoted below:-

“146. Customs house agents to be licensed – (1) No person shall carry on business as an agent relating to the entry or departure of a conveyance or the import or export of goods at any customs station unless such person holds a licence granted in this behalf in accordance with the regulations.

(2) The Board may make regulations for the purpose of carrying out the provisions of this section and, in particular, such regulation may provide for-

- (a) the authority by which a licence may be granted under this section and the period of validity of any such licence;
- (b) the form of the licence and the fee payable therefor;
- (c) the qualifications of persons who may apply for a licence and the qualifications of persons to be employed by a licensee to assist him in his work as an agent;
- (d) the restrictions and conditions (including the furnishing of security by the licensee) subject to which a licence may be granted;
- (e) the circumstances in which a licence may be suspended or revoked; and
- (f) the appeals, if any, against an order of suspension or revocation of a licence, and the period within which such appeals shall be filed.”

5. It is apparent from a plain reading of Section 146(2) of the Act that it is couched in wide terms and the Board has the power to *“make regulations for the purpose of carrying out the provisions of this Section”*. This power

is not circumscribed by the specific clauses of Section 146(2) of the Act. The Supreme Court in the case of **Union of India v. Azadi Bachao Andolan:** (2004) 10 SCC 1 had explained that the power of an authority to make Rules and Regulations would be wide and not be limited only to the specific provisions contained in the statute but also the object and purpose of the enactment. The relevant extract of the said judgment is quoted below:-

“56. The question whether a particular delegated legislation is in excess of the power of the supporting legislation conferred on the delegate, has to be determined with regard not only to specific provisions contained in the relevant statute conferring the power to make rules or regulations, but also the object and purpose of the Act as can be gathered from the various provisions of the enactment. It would be wholly wrong for the court to substitute its own opinion as to what principle or policy would best serve the objects and purposes of the Act; nor is it open to the court to sit in judgment over the wisdom, the effectiveness or otherwise of the policy, so as to declare a regulation ultra vires merely on the ground that, in the view of the court, the impugned provision will not help to carry through the object and purposes of the Act. This Court reiterated the legal position, well established by a long series of decisions in *Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth* [(1984) 4 SCC 27]

“So long as the body entrusted with the task of framing the rules or regulations acts within the scope of the authority conferred on it, in the sense that the rules or regulations made by it have a rational nexus with the object and purpose of the statute, the court should not concern itself with the wisdom or efficaciousness of such rules or regulations. It is exclusively within the

province of the legislature and its delegate to determine, as a matter of policy, how the provisions of the statute can best be implemented and what measures, substantive as well as procedural would have to be incorporated in the rules or regulations for the efficacious achievement of the objects and purposes of the Act. It is not for the Court to examine the merits or demerits of such a policy because its scrutiny has to be limited to the question as to whether the impugned regulations fall within the scope of the regulation-making power conferred on the delegate by the statute.”

6. The Supreme Court in the case of **Academy of Nutrition Improvement v. Union of India**: (2011) 8 SCC 274 held as under:-

“66. Statutes delegating the power to make rules follow a standard pattern. The relevant section would first contain a provision granting the power to make rules to the delegate in general terms, by using the words “to carry out the provisions of this Act” or “to carry out the purposes of this Act”. This is usually followed by another sub-section enumerating the matters/areas in regard to which specific power is delegated by using the words “in particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters”. Interpreting such provisions, this Court in a number of decisions has held that where power is conferred to make subordinate legislation in general terms, the subsequent particularisation of the matters/topics has to be construed as merely illustrative and not limiting the scope of the general power. Consequently, even if the specific enumerated topics in Section 23(1-A) may not empower the Central Government to make the impugned rule (Rule 44-I), making of the rule can be justified with reference to the general power conferred on the Central Government under Section 23(1), provided the rule does not travel beyond the scope of the Act.”

7. Applying the aforesaid principle, the Board's power to make regulations would not be limited to the specific clauses but also such regulations for the purpose of carrying out the provisions of Section 146 of the Act. The same would include all facets of carrying on business as an agent. I see no lack of competence /or authority with the Board to provide /or appeals – as has been done under Regulations 21 of CBLR, 2013 – against all orders of the Commissioner passed under the said regulations including under Regulation 23 of CBLR, 2013.

8. In my view, the view expressed by CESTAT, Mumbai in *S.N.M. Agency (supra)* is clearly erroneous. The learned counsel for the respondent also contends that the appeal against orders of Commissioner of Customs are being entertained and the decision of CESTAT, Mumbai in *S.N.M. Agency (supra)* is not being followed.

9. In view of the aforesaid, the present petition and the application are dismissed with liberty to the petitioner to approach CESTAT by way of an appeal.

10. It is, however, clarified that in the event the petitioner files an appeal within a period of two weeks from today, the same would be considered on merits uninfluenced by the question of any delay.

VIBHU BAKHRU, J

NOVEMBER 10, 2014

MK/pkv