***IN THE HIGH COURT OF JUDICATURE AT BOMBAY***

***CIVIL APPELLATE JURISDICTION***

**WRIT PETITION NO. 5090 OF 2015**

Milliard Logistics Pvt Ltd ..Petitioner

Vs.

Union of India through the Secretary
and Another ..Respondents

**WITH**

**ORDINARY ORIGINAL CIVIL JURISDICTION**

**CUSTOMS APPEAL NO.79 OF 2015**

**WITH**

**NOTICE OF MOTION NO.945 OF 2015**

**IN**

**CUSTOMS APPEAL NO.79 OF 2015**

The Commissioner of Customs(General) ..Appellant/Applicant

Vs.

Milliard Logistics Pvt Ltd ..Respondents

Mr.Vinay Ansurkar a/w Mr Brijesh Pathak,for the Petitioner in W.P.No.5090/15 and Respondents in CUAPP.No.79/15.

Mr. Pradeep S. Jetley, for the Appellant/Applicant in CUAPP No.79/15 & NMA.94515 and Respondents in W. P. No.5090/15.

CORAM :- **S.C. DHARMADHIKARI &**
**B.P. COLABAWALLA, JJ.**
DATE :- **SEPTEMBER 7, 2015.**

P. C.:

By this Petition under Article 226 of the Constitution of India, the Petitioner has sought a declaration that the action of the Respondents in not allowing the normal operation of the Customs Broker License as per the orders passed by the Customs Excise and Service Tax Appellate Tribunal violates the Petitioner's fundamental right guaranteed by Article 19(1) (g) of the Constitution of India. It is also violative of the constitutional mandate enshrined in Article 14 of the Constitution of India.

2 The Petitioner was granted Customs House Agent Brokers License by the Commissioner of Customs, Kanpur. The Petitioner is also permitted to work at Mumbai Custom Commssionerate.

3 A bill of entry was filed by the Petitioner on behalf of the importer M/s R. N. Trading for clearance of assorted soft

drinks, chocolates, baked beans, vinegar etc. A bill of entry was registered on 8th November, 2013 and was presented for examination on 11th November, 2013 by the employee of the Petitioner along with No Objection Certificate. The Customs Authorities found that the No Objection Certificate produced was forged or bogus. This was confirmed by the Authorities, namely, Foods Safety and Standard Authority of India in writing by letter dated 4th December, 2013. Thereafter, further process was undertaken. The goods were seized. A provisional release was directed after a fresh No Objection Certificate was produced on 3rd February, 2014.

4 The Customs Authorities have alleged that the certificate was collected and submitted by one Hemant Kumar Pol, an employee of the Petitioner and thereafter statement came to be recorded. He handed over all documents to one Prakash Phapale on 6th November, 2013 and that is how the certificate from the Food Safety And Standard Authority of India was obtained. After several statements were recorded, the order was passed prohibiting

the Petitioner from carrying on business in terms of the authorization. This order was then confirmed and aggrieved by the same, the Petitioner approached the Tribunal. The Tribunal, after recording all the submissions, concluded that a show cause notice dated 28th February, 2015 had been issued and served on the Petitioner by the Commissioner of Central Excise and Customs, Kanpur and since the enquiry had commenced, no purpose would be served in continuing the prohibitory order. The Tribunal heard both sides and concluded in paragraph 5 of its order page 100, as under:-

> *"Having considered the rival contentions, we hold that there is no serious charges against the appellant, nor there is any alleged loss of the revenue and nor any reasons have been stated in the impugned order requiring prohibition of the appellant-Customs Broker for carrying on his business in the Mumbai Customs Commissionerate and accordingly, we set aside the impugned order. The appellant-Customs Broker shall be entitled to carry on their work as Customs Broker with immediate effect."*

It is relying upon these observations, that it is contended before us that the Petitioner must be allowed to carry on his business and in terms of the license.

5 On the earlier occasion, after hearing both sides, we found that this order of the Tribunal has been challenged by the Revenue. Therefore, we placed the Revenue's Appeal and which was admitted also for hearing together with this Writ Petition.

6 A prohibitory order passed by the Commissionerate at Kanpur on 20th January 2015 and the show cause notice dated 28th February 2015 was brought to our notice. Pertinently, Mr Jetly sought time to point out when the Commissioner of Customs at Kanpur would complete and conclude the enquiry in pursuance of the show cause notice issued to the Petitioner dated 28th February, 2015.

7 We placed the matter today, at the request of Mr Jetly and after he sought time to file on affidavit.

8 Now, the affidavit has been filed and in which it has

been indicated that the case papers were forwarded to the Kanpur Commissionerate. The Commissioner Customs, Central Excise and Service Tax, Kanpur has passed an order on 11$^{th}$ February, 2015. He was fully empowered to do so. He was *prima facie* satisfied that the Petitioner has not fulfilled its obligation under the Customs Broker License Regulations, 2013, as explained in paragraph 4 of the affidavit-in-reply at page 107 of the paper book. That is how issuance of the show cause notice dated 28$^{th}$ February, 2015 has been justified.

9 Mr Jetly, on instructions from the Commissioner of Customs at Kanpur, has informed the Court that the enquiry in pursuance of this show cause notice will be completed within three months from today. On the other hand, the Petitioner's Advocate submits that the Petitioner is suffering, though he has favourable order in terms of the Tribunal's direction dated 27$^{th}$ March, 2015. Once the Tribunal has concluded that there is no *prima facie* case, then, the prohibitory order should not be continued.

10 We do not wish to go into any wider question or controversy. A power to suspend or prohibiting the use of the licence has not been questioned in the present proceedings. It is only the continued prohibition which is questioned by urging that the Tribunal's order is not implemented. However, we find that an Appeal was entertained by this Court and admitted challenging that order. Further, from 20th January 2015, until 27th March 2015, the prohibitory order is in force. Despite the Tribunal's order also it has not been restored as we admitted the Revenue's Appeal. That this Appeal and the Revenue's Appeal are pending since June 2015.

11 After we have heard the Petition and Appeal for some time, we are of the view that interest of justice would be served, if we direct the Commissioner at Kanpur to conclude the proceedings as expeditiously as possible and within two months from the date of receipt of a copy of this order. If the proceedings could not be concluded for reasons other than non co-operation of the Petitioner, then, the Commissioner may consider the Petitioner's request for restoration of the license, pending enquiry and such application

shall be dealt with on its own merits and in accordance with law without being uninfluenced by a prior prohibitive order and pendency of the enquiry. We also clarify that the enquiry shall be concluded by the Commissioner by applying his mind independently to the charges in the show cause notice, the explanation given by the Petitioner thereto and the documents and materials relied upon by the Petitioner. The Commissioner should not influence himself by any preliminary enquiries or findings in any preliminary report. Equally, the Commissioner is free to decide the issue uninfluenced by any *prima facie* or tentative observation of the Tribunal. We direct that all contentions which can be raised in law by the Petitioner, are permitted to be raised before the Inquiring authority and at the conclusion of the proceedings, he shall pass a speaking order containing reasons for his final opinion. All contentions in that regard are kept open. The Petition as well as the Appeal is disposed of.

12 The Notice of Motion is also disposed of.

**( B. P. COLABAWALLA, J.)** **(S. C. DHARMADHIKARI, J.)**

**CERTIFICATE**

Certified to be true and correct copy of the original signed Judgement/Order.