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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CUSTOMS APPEAL No. 4 of 2014.

Commissioner of Customs (General) } ..Appellant.
Vs
M/s Dominic and Co. } ..Respondent.

Mr Pradeep S. Jetly, for the Appellant.
Mr Prakash Shah i/by Mr Anil Balani for the Respondent.

CORAM : S.C. DHARMADHIKARI &
S.P. DESHMUKH, JJ.
DATE : 6th JANUARY, 2015.

P.C.

1] This is a Revenue's appeal.

2] It challenges the order dated 12th June, 2013 of the Customs Excise and Service Tax Appellate Tribunal, West Zonal Bench at Mumbai (“CESTAT” for short) in Appeal No. C/927/12.

3] That appeal was filed by the Respondent Customs House Agent (CHA) as he was aggrieved by the order passed on 26th June, 2012 by the Commissioner of Customs (General), Mumbai. That order revokes his licence, namely, Customs House Agent Licence No. 11/126 and visits him with forfeiture of entire amount of security deposit.

4] We have heard Mr Jetly appearing in support of this appeal and Mr Prakash Shah appearing on behalf of the respondent.

5] There is no dispute about the factual position. The only ground on which the Tribunal has interfered with the order of the Commissioner is that the initial inquiry resulted in submission of a Report by the Inquiry Officer. That report indicates that the Inquiry Officer dropped the charges levelled against the respondent under Regulations 12 and 13 (n). There were other two charges under Regulation 13 (a) and (d) which were held to be proved by the Inquiry Officer. This report was forwarded to the Commissioner and he disagreed with the Inquiry Officer. He was of the opinion that there is a case made out in relation to the violations of the Customs House Agents Licensing Regulations, 2004 and particularly Regulations 12 and 13 (a), (d) and (n). Thus, he was of the prima facie view, that all charges ought to have been held to be proved.

6] The Commissioner, therefore, disagreed with the Inquiry Officer and passed the order dated 26th June, 2012 revoking the Customs House Agents Licence.

7] The Tribunal inquired with the Revenue and as was enquired by us as to whether the Commissioner issued any notice to the respondent before passing the order of revoking the licence. Since the Commissioner expressed his disagreement with the findings recorded by the Inquiry Officer in their entirety, the Regulations though permit him to hold a *de novo* inquiry, that could be only after due notice to the respondent in that behalf. In other words, a notice indicating the disagreement with the findings of the Inquiry Officer, the extent of such disagreement and the prima facie reasons for such disagreement, ought to be communicated and that notice should be served on the agent like the respondent. After such an agent responds to the notice and if the Commissioner is further satisfied that the explanation does not deserve acceptance, he is free to hold a *de novo* inquiry and into all charges. This is not merely a matter of procedure but one of substance. Even the Full Bench decision of this Court in the case of **Delta Logistics Vs Union of India,** reported in **2012 (286) E.L.T. 517** lays down such a principle. If that is applicable, then, the Tribunal did not commit any error in setting aside the order passed by the Commissioner.

8] The above opinion expressed by us further enabled us to direct Mr Jetly, appearing for the appellant, to take instructions as to whether the Commissioner desires to initiate the process in accordance with law, at least now. If he does not, then, we would rest content with the conclusion that the appellate order of the Tribunal does not raise any substantial question of law, we would have proceeded to dismiss the appeal.

9] As Mr Jetly requested, we posted the matter till today and deferred the passing of final order. Upon instructions, Mr Jetly states that the Commissioner will now issue the requisite notice, await for a reply or explanation thereto from the respondent and thereafter, if necessary, hold a *de novo* inquiry and he would conclude all this within a period of three months from the date of receipt of a copy of this order.

10] After hearing Mr Jetly only on this point and while acceding to his request, we are of the opinion that the conclusion of the Tribunal is not vitiated by any error of law, apparent on the face of the record nor can it be termed as perverse. The appeal, therefore, does not raise any substantial question of law. It is, accordingly, dismissed.

11] However, Mr Prakash Shah, at this stage relied upon a order passed by this Court in Customs Appeal No.15 of 2013. The Commissioner of Customs (General) (appellant) Vs. M/s H.P. Joshi & Co. (respondent) decided on 10th July,2013. Mr Shah submits that the only consequence that would follow from the Tribunal's order is restoration of the licence. Though the licence is issued for a term, according to Mr Shah, after the above order of the Tribunal and which is not interfered with by this Court, the respondent is entitled to carry on business as Customs House Agent for the balance or remainder of the term of the licence. He, therefore, presses for restoration of the licence and forthwith.

12] Mr Jetly submits that the licence was initially suspended and thereafter cancelled and with effect from 4th July, 2012. That cancellation was set aside by the Tribunal on 12th June, 2013. In spite of a favourable Tribunal order, the respondent failed to take steps to apply for restoration of the licence. In the appeal of the Revenue, now this Court should not restore the licence but proceed to deny this request, is the submission of Mr Jetly.

13] We express no opinion on the course adopted by the Division Bench in the case of HP Joshi (supra). Prima facie, there is substance in the contention of Mr Jetly that in the appeal of the Revenue to challenge a order of the Tribunal passed in favour of the Agent, such order could not have been passed. However, this matter does not deserve entering into such controversy. We accept the above statements of Mr Jetly, made on instructions, as undertakings to this Court. We, accordingly, direct that the proceedings pursuant to the liberty sought should be concluded within a period of three months from the date of receipt of a copy of this order. If the proceedings could not be concluded for any reason and which is not attributable to the respondent, then, after a period of three months the licence of the respondent shall stand restored, provided the same is in force and has not expired by efflux of time and for any other reason permissible in law. In that event, the proceedings may continue but subject to their outcome the licence shall be restored in favour of the respondent. Even this course is without prejudice to the rights and contentions of both sides. Needless to clarify we have not expressed any opinion on the merits of the charges and all contentions of both sides in the pending inquiry in relation thereto are kept open.

14] Appeal disposed off accordingly. No costs.

(S.P. DESHMUKH, J.) **(S.C. DHARMADHIKARI,J)**