

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

% Judgment Reserved on: 16th October, 2015
Judgment Delivered on: 02nd November, 2015

+ WP(C) 9660/2015

Him Logistics Pvt. Ltd.

.... Petitioner

versus

The Commissioner of Customs (General)

.....Respondent

Advocates who appeared in this case:

For the Petitioner : Mr Priyadarshi Manish, Ms Anjali Manish and Mr Rahul Ranjan

For the Respondent : Ms Sonia Sharma.

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J

WP(C) 9660/2015 & CM No.23058 /2015(stay)

1. The petitioner has filed the present petition seeking quashing of the order-in-original dated 01.09.2015, whereby the Commissioner of Customs has revoked the Customs House Agent (CHA for short) licence of the petitioner and ordered forfeiture of the security furnished by the petitioner and further imposed a penalty under Regulation 22 read with Regulation 20 of the Customs Brokers

Licensing Regulations, 2013 (hereinafter referred to as the CBLR, 2013).

2. Though the impugned order is an appealable order, the petitioner has approached this Court under Article 226 of the Constitution for exercise of its writ jurisdiction on the ground that the order has been passed without complying with the principles of natural justice.

3. Normally, in a case where a petitioner is seeking to invoke the writ jurisdiction of this Court, impugning an order from which an appeal lies, this Court would be reluctant to interfere in the same and relegate the petitioner to the alternative remedy, however, in the peculiar facts and circumstances of the case, as would be apparent from the facts referred to herein below, we are making an exception and are exercising discretion in entertaining this petition under Article 226.

4. On 01.11.2014, a show-cause notice was issued to the petitioner along with an importer to show-cause as to why penalty should not be imposed upon them for violation of the Customs Act, 1962 and Rule 13 of the Customs House Agents Licensing Regulations, 2004. A detailed reply to the same was filed by the petitioner.

5. On 14.02.2015, another show-cause notice was issued to the

petitioner to show-cause as to why its CHA licence should not be revoked for failure to comply with the provisions of Regulations 11(a), 11(d), 11(e) and 11(n) of the CBLR, 2013 and why penalty be not imposed in terms of Regulations 22 read with Regulation 20 of the CBLR, 2013. The petitioner filed a detailed reply to the show-cause notice and submitted the relevant documents.

6. The Assistant Commissioner of Customs, who was appointed as the Inquiry Officer, after conducting the inquiry on 05.06.2015, submitted a report that the petitioner had not contravened the provisions of the Regulations 11(a), 11(d), 11(e) and 11(n) of the CBLR, 2013 and exonerated the petitioner from all charges.

7. On 10.06.2015, a copy of the inquiry report was furnished to the petitioner, and the petitioner was directed to submit his representation against the same, within thirty days. On 13.07.2015, the petitioner, in response to the furnishing of the inquiry report, submitted a representation to the Commissioner stating that it agreed with the report of the Inquiry Officer and requested for revocation of suspension of licence and dropping of the show-cause notice in view of the exoneration of the petitioner by the inquiry report. On 20.08.2015, the petitioner received a letter from the Commissioner of Customs requiring the petitioner to appear for a personal hearing on 31.08.2015. On 31.08.2015, the petitioner appeared pursuant to the

notice of personal hearing and reiterated its stand in its representation that in view of the exoneration by the inquiry report, the same be accepted and the suspension of the licence of the petitioner be revoked.

8. By the impugned order dated 01.09.2015, the Commissioner of Customs disregarding the inquiry report, has revoked the petitioner's CHA licence and has directed forfeiture of the security deposit and imposed penalty under Regulation 22 read with Regulation 20 of the CBLR, 2013.

9. The petitioner has impugned the order contending that the Commissioner of Customs could not have disregarded the findings returned in the inquiry report and should have accepted the same and revoked the suspension of the licence of the petitioner. In the alternative, it is contended that if the Commissioner of Customs had any reason to disagree with the inquiry report, the Commissioner of Customs should have at least communicated the same to the petitioner prior to taking a decision to disregard the inquiry report. It is contended that, it would have afforded the petitioner sufficient opportunity to represent against the reasons for disagreement and to answer/explain any adverse material.

10. The questions that arise for consideration are: (i) whether the

principal commissioner or commissioner of customs, as the case may be, is bound to accept the inquiry report, if it is in favour of the Custom Broker or can he disagree with the same?, and (ii) in case the answer to question no. (i) is that the commissioner can disagree with the inquiry report, then is it necessary for him to communicate the reasons for disagreement to the Custom Broker?

11. For answering the questions, it would be necessary to examine the provisions of Regulations 20 and 22 of the CBLR, 2013, which prescribe the procedure for revocation of licence and imposition of penalty. Regulations 20 and 22 of the CBLR, 2013 read as under:-

20. Procedure for revoking licence or imposing penalty.

(1) The Commissioner of Customs shall issue a notice in writing to the Customs Broker within a period of ninety days from the date of receipt of an offence report, stating the grounds on which it is proposed to revoke the licence or impose penalty requiring the said Customs Broker to submit within thirty 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 Broker 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 Broker, 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, as the case may be, to inquire into the grounds which are not admitted by the Customs Broker.

(3) The Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, 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 Broker, for the purpose of ascertaining the correct position.

(4) The Customs Broker 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, as the case may be, shall prepare a report of the inquiry and after recording his findings thereon submit the report within a period of ninety days from the date of

issue of a notice under sub-regulation (1).

(6) The Commissioner of Customs shall furnish to the Customs Broker a copy of the report of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, and shall require the Customs Broker to submit, within the specified period not being less than thirty days, any representation that he may wish to make against the said report.

(7) The Commissioner of Customs shall, after considering the report of the inquiry and the representation thereon, if any, made by the Customs Broker, pass such orders as he deems fit either revoking the suspension of the license or revoking the licence of the Customs Broker or imposing penalty not exceeding the amount mentioned in regulation 22 within ninety days from the date of submission of the report by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, under sub-regulation (5) :

Provided that no order for revoking the license shall be passed unless an opportunity is given to the Customs Broker to be heard in person by the Commissioner of Customs.

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22. Penalty.-

A Customs Broker, who contravenes any provisions of these regulations or who fails to comply with any provision of these regulations

shall be liable to a penalty, which may extend to fifty thousand rupees.

12. Sub-regulations 5, 6 and 7 of Regulation 20 of CBLR, 2013 stipulate that the Inquiry Officer shall prepare a report and record his findings within ninety days from the date of issuance of notice under sub-Regulation (1). The Principal Commissioner or Commissioner of Customs, as the case may be, is to furnish to the Customs Broker a copy of the report of the Deputy Commissioner of Customs or the Assistant Commissioner of Customs, as the case may be, and requiring the Customs Broker to submit any representation that he may wish to make against the said report and on consideration of the report on inquiry and the representation thereon, if any, made by the Customs Broker, the Principal Commissioner or the Commissioner of Customs, as he deems fit, may pass orders, revoking the suspension of the licence or revoking the licence of the Customs Broker or imposing penalty not exceeding the amount mentioned in Regulation 22. It is provided that no order for revoking the licence shall be passed unless an opportunity is given to the Customs Broker to be heard in person by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be.

13. The fact that the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, on consideration of

the inquiry report and the representation, if any is to pass an order as he deems fit, envisages that he is not bound to accept the inquiry report in all circumstances. He is to independently assess the material and the report and to pass appropriate orders. *Under Regulation 22 of the CHA Licensing Regulations, 2004 it is the Commissioner who is empowered to issue show cause notice to the CHA to suspend or revoke the CHA license and it is the Commissioner who is empowered to pass 'such orders as he deems fit' after considering the inquiry report and the representation of the CHA, if any. Therefore, whether the inquiry report is in favour of the CHA or not, it is the Commissioner who has to pass the final order as he deems fit on the show cause notice issued by the Commissioner. The words 'such orders as he deems fit' in Regulation 22(7) leave no manner of doubt that it is entirely at the discretion of the Commissioner, whether to agree or disagree with the inquiry report and pass such orders as he deems fit on the show cause notice. When Regulation 22(7) expressly empowers the Commissioner to pass such orders as he deems fit, it would not be possible to hold that if the inquiry report is in favour of the CHA, the Commissioner cannot pass an order against the CHA even if the Commissioner disagrees with the inquiry report.*¹

14. The answer to question no. (i) is clearly that the principal

¹ *M/s. Delta Logistics v. Union of India* (2012) 286 ELT 517 (Bombay High Court Full Bench)

commissioner or commissioner of customs, as the case may be, is not bound to accept the inquiry report, if it is in favour of the Customs Broker and he can disagree with the same.

15. Coming to question no. (ii). The opportunity of hearing, as contemplated by Regulation 20, envisages that the Customs Broker should be provided the material, which is to be used against him for passing an adverse order, so he is in a position to rebut, qualify or explain the same and show cause against the proposed adverse action. In case only favourable material is provided to the Customs Broker and the adverse material or the reasons for disagreement are withheld from him, then, the entire exercise would be a futility as he would not be provided with an opportunity to rebut, qualify or explain the same and show cause against the proposed adverse action. When an inquiry report is in favour of the Customs Broker and completely exonerates him and the Principal Commissioner of Customs or the Commissioner of Customs, as the case may be, intends to disregard the inquiry report on the basis of any material available or reason, then the principles of natural justice require that the said material/reasons must be communicated to the agent to enable the agent to rebut, qualify or explain the same and to show cause against the proposed adverse action. In the absence of communication of adverse material/reasons, the Customs Broker would not be aware of the proposed adverse

action and would not be able to show cause against the same and there would be failure of compliance with the principles of natural justice, as envisaged by Regulation 20 of CBLR, 2013.

16. In the present case, the inquiry report is in favour of the petitioner and exonerates him. Mere communication of the inquiry report, which is in favour of the petitioner and without communication of adverse material and/or reasons for difference, would not enable the petitioner to rebut, qualify or explain the adverse material and show cause against the proposed adverse action. Principles of natural justice required that before an adverse decision was taken against the petitioner, the petitioner should have been communicated the adverse material/reasons for disagreement. The fact that the reasons for disagreement were not communicated to the petitioner prior to the adverse decision being taken by the Commissioner of Customs, there was clearly a violation of principles of natural justice. The Commissioner of Customs should have recorded the reasons for disagreement and forwarded the same to the petitioner for his comments before passing the impugned order. Because of failure to do so, the impugned order is clearly in violation of the principles of natural justice.

17. The decision of the full Bench of the Bombay High Court in the case of **M/s. Delta Logistics v. Union of India (Supra)** relied upon by

the Respondent, does not help the case of the respondent as in the said case, the only question before the Full Bench was whether the Commissioner of Customs is bound by the findings recorded in the inquiry report, if the finding was in favour of the CHA or could he disagree with the findings recorded in the inquiry report and pass such orders, as he deems fit. The Full Bench answered the question holding that the Commissioner was empowered to disagree with the findings recorded in the inquiry report and was not bound to accept the same even if the same were in favour of the CHA. The Full Bench was not considering the question whether the principles of natural justice required the Commissioner to record adverse material and communicate the same to the Customs Broker?

18. We answer question no. (ii) by holding that where the principal commissioner or commissioner of customs, as the case may be, intends to disagree with the inquiry report, that is in favour of the Customs Broker, then it is mandatory for him to communicate the adverse material/reasons for disagreement to the Custom Broker and require him to show cause/represent against the proposed adverse order.

19. In view of the above, the impugned order dated 01.09.2015 cannot be sustained. The same is accordingly quashed. However, the impugned order dated 01.09.2015 shall be treated as a communication

of the reasons for disagreement entered by the Commissioner and the petitioner, if it so desires, may furnish its objections to the reasons for disagreement within a period of two weeks and show cause/represent against the proposed adverse order. The proceedings shall be finalized by the Commissioner of customs within a period of four weeks thereafter.

20. The writ petition is accordingly disposed of in the above terms. There shall be no order as to costs.

SANJEEV SACHDEVA, J.

BADAR DURREZ AHMED, J.

November 02, 2015
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