

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4714 OF 2016

Evolis Card Printer India Pvt. Ltd.,
Govandi, Mumbai
V/s.

.... Petitioner

The Union of India,
Through the Secretary,
Ministry of Law and Justice,
Department of Legal Affairs,
Branch Secretariat, Mumbai & Ors.

.... Respondents

Mr. Sujay Kantawala with Mr. Anupam Dighe,
i/by M/s. India Law Alliance, for the Petitioner.

Mr. Pradeep S. Jetly for the Respondents.

CORAM : S.C. DHARMADHIKARI &
DR. SHALINI PHANSALKAR-JOSHI, J.J.

DATE : 26TH APRIL, 2016.

P.C. :

1. This Petition was placed before us yesterday and the Petitioner, though challenging an order, styled as an 'Examination Order', dated 28th March 2016, copy of which is at Exhibit-"D" to the Petition, and a communication dated 13th April 2016, copy of which is at Exhibit-"G" to the Petition, what we were informed earlier by Mr. Jetly, learned counsel for the Respondents, is that this is not the only step or measure which will enable the authorities to act further in accordance with law, but there is an assessment done and which resulted in a speaking order. That speaking order is appealable.

2. In order to enable Mr. Jetly to take instructions and produce a copy of such a speaking order, that too passed by a competent authority, the matter was adjourned to today.

3. In all fairness, Mr. Jetly has produced, stated to be a draft of, an order passed by the Deputy Commissioner of Customs, Appraising Group V, J.N. Customs House, Nhava Sheva-I.

4. Mr. Kantawala, learned counsel for the Petitioner, seriously disputes the fact that an order was already passed and he states that this draft order, which is produced, has been signed yesterday and that too on conclusion of the hearing held yesterday.

5. After the parties were heard for some length on this point, we made it clear to Mr. Jetly that this exercise, which is already undertaken, cannot be validated and upheld.

6. If the order was already passed, it should have been communicated. If it was not ready, then, it should have been informed to the Court that the order is yet not ready. We do not wish to enter into this controversy for which we have made it clear that we are not upholding the exercise undertaken by the Deputy Commissioner of Customs.

7. At our insistence and after instructions, Mr. Jetly states that the draft order that is tendered in Court today and handed-in shall not be treated as an order of the competent authority. Now a fresh speaking order and by the competent authority will be made and after hearing the Petitioner.

8. We direct the Petitioner to appear before this competent authority on 27th April 2016 at 11 am. This competent authority shall, after giving a personal hearing to the Petitioner, so also an opportunity to produce all the relevant materials, pass a speaking order, uninfluenced by the draft order tendered today and which we have taken on record and marked "X" for identification. This speaking order should reflect application of mind and afresh. The speaking order should also contain detailed reference to the Petitioner's submissions and the documents produced. We clarify that, while passing such an order, the competent authority shall not be influenced by any of the conclusions recorded earlier. We keep open all the contentions of the Petitioner. We clarify that we have expressed no opinion thereon.

9. We expect the speaking order to be passed within one week from the date of conclusion of hearing.

10. Writ Petition is disposed of with the above directions.

[DR. SHALINI PHANSALKAR-JOSHI, J.] [S.C. DHARMADHIKARI, J.]