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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.03.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

and

THE HON'BLE MR.JUSTICE C.T. SELVAM

W.A. (MD) No.359 of 2016

and

C.M.P. (MD) No.2269 of 2016

1.The Commissioner of Customs,
Customs House, New Harbour Estate,
Thoothukudi - 628 004.

2.The Deputy Commissioner of Customs,
Customs House, (Customs Broker Section),
Customs House, New Harbour Estate,
Thoothukudi - 628 004.

3.The Commissioner of Customs,
Chennai - VIII - Commissionerate,
Customs Broker Section,
Custom House, No.33, Rajaji Salai,
Chennai - 600 001.

4.The Assistant Commissioner of Customs,
Docks Intelligence Unit,
Custom House, No.33, Rajaji Salai,
Chennai - 600 001.

5.The Superintendent of Customs,
Docks Intelligence Unit,
Custom House, No.33, Rajaji Salai,
Chennai - 600 001.

... Appellants

Vs.

M/s.Daniel and Samuel Logistics Pvt Ltd.,
No.106K/15E/1, 1st Floor,
Sinnamani Nagar 1st Street,
Thoothukudi - 628 001,
Thoothukudi District.

... Respondent

PRAYER: The Writ Appeal is filed under Clause 15 of the Letters Patent, against the order dated 08.09.2015 passed in W.P.(MD) No.15443 of 2015.

Prayer in WP(MD). 15443/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari or any other writ, order or direction in the nature of Writ calling for the records relating to the impugned order passed by the 3rd respondent dated 30.03.2015 in F.No. S2/24/2010 -CHA and quash the same.



For Respondent : Mr.N.Dilip Kumar

JUDGMENT

(Judgment of the Court was made by Hon'ble Mr.Justice S.MANIKUMAR)

Material on record discloses that in exercise of the powers conferred under Regulation 23 of the Customs Brokers Licensing Regulations, 2013, the Commissioner of Customs, Chennai - VIII - Commissionerate, Customs Broker Section, Custom House, Chennai / Appellant No.3, vide proceeding No.F.No.S2/24/2010-CHA, dated 30.03.2015, has ordered, as hereunder:-

"14. In view of the discussions above and in exercise of the powers conferred under provisions of Regulation 23 of the Customs Brokers Licensing Regulations, 2013, I prohibit M/s Daniel & Samuel Logistics Pvt Ltd., (PAN No.AADCD1437C) from working in any section of the Customs Commissionerate and Customs station under the jurisdiction of Chennai Customs Zone, with immediate effect. However, all documents already filed prior to this order will be allowed to be completed.

15. Since the Customs Broker Licence was issued to M/s Daniel & Samuel Logistics Pvt Ltd., by Tuticorin Commissionerate, the further course of action will be initiated by them under Customs Broker Licencing Regulation, 2013, as per the instructions contained in para (iii) 5.2 of Board's Circular No.09/2010 - Customs dated 08.04.2010.

16. This order is issued without prejudice to any other action that may be taken against the Customs Broker and their employees / representative etc., under the provisions of the Customs Law or any other law for the time being in force in the Union of India."

2.The abovesaid order has been impugned on the ground inter alia that it is violative of principles of natural justice. After hearing the learned counsel appearing for both parties, and taking note of the decision of this Court in A.M.Ahamed and Co .vs. Commissioner of Customs, Tuticorin reported in **2013 (288) ELT 497 (Madras)** and of the decision of Calcutta High Court in **Shipping and Clearing (Agents)Private Limited .vs. Union of India** reported in **2014 (308) ELT 45 (Cal)**, a Learned Single Judge has quashed the order, dated 30.03.2015, in proceeding No.F.No.S2/24/2010-CHA, and remanded the matter back to the respondents, to consider the matter afresh, after giving show-cause notice to the respondent.

3.Assailing the correctness of the Writ Court, Mr.R.Aravindan, learned Senior Standing Counsel appearing for the appellants submitted that Regulation 23 of the Customs Brokers Licensing Regulations, 2013, empowers the Commissioner of Customs to prohibit any custom broker from working in any section or sections and that there is no need to issue any show-cause notice and conduct an enquiry, as directed by the Writ Court. Reliance has also been made on the decision of High Court of Judicature for Rajasthan at Jaipur in **Pinkcity Logistics Ltd., Vs. Commissioner of Customs** reported in **2015 (320 ELT 241 (Raj))** wherein, the decision of **Services Courts Gov.in/hservices** reported in **2013 (288) ELT 497 (Madras)** (cited supra) has been considered. It is the submission of learned counsel for the appellants that, when Regulation 23 of the Customs Brokers Licensing Regulations,



2013, does not contemplate a pre-decisional opportunity, prohibition can be made, if there are serious violations of the Licensing Regulations, 2013.

Heard learned counsel for the appellants and perused the materials available on record.

4. Contending inter alia that respondent has contravened the Regulation Nos. 11 and 18 of the Customs Brokers Licensing Regulations, 2013, Commissioner of Customs, Chennai - VIII - Commissionerate, Customs Broker Section, Custom House, Chennai / Appellant No. 3, in exercise of the powers conferred under Regulation 23 of the Customs Brokers Licensing Regulations, 2013, has prohibited the respondent from working in any Section of the Customs Commissionerate and Customs station, under the jurisdiction of Chennai Customs Zone, with immediate effect. It is also stated that further course of action could be initiated under the Customs Brokers Licensing Regulations, 2013, as per the instructions contained, in para (iii) 5.2 of Board's Circular No. 09/2010 - Customs, dated 08.04.2010.

5. When the impugned order was tested before the Writ Court, on the ground inter alia that it is violative of principles of natural justice, stating that it is without issuing a show-cause notice and holding an enquiry, the Writ Court relied on a decision of this Court reported in 2013 (288) ELT 497 (Madras) (cited supra) and found that the decision is squarely applicable to the case on hand. At this juncture, it is relevant to reproduce the decision considered by the Writ Court.

5. On consideration, I find that the impugned order cannot be sustained. The order of prohibition is a final order passed by the authority not vested any power to exercise of jurisdiction under Regulation 22.

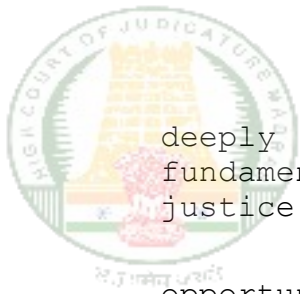
6. It is now well-settled law that even administrative orders which affects the rights of a party can be passed only by following the principles of natural justice. That order under Regulation 21 was passed in violation of principles of natural justice on the face of it is arbitrary and thus not sustainable in law.

7. The Writ Petition accordingly is allowed. The impugned order is set aside. However, liberty is granted to the respondent to pass fresh order in accordance with law, after giving an opportunity of hearing to the Petitioner."

6. The Writ Court has also considered the decision of Calcutta High Court reported in 2014 (308) ELT 45 (Cal), (cited supra) and it is reproduced as under:-

"5. The Apex Court in the case of Uma Nath Pandey .vs. State of Uttarpradesh, reported in 2010(20) STR 268(SC) = 2009 (237) ELT 241(SC) held that violation of principles of natural justice is opposed to the fair adjudication and conscience. The party should be made aware of the allegations made against him which may result into a penal order and any infraction shall entail the action liable to be struck down for violation of principles of natural justice. It would be apt to quote paragraph 19 of the said judgement:-

"19. Natural justice is the essence of fair adjudication,



deeply rooted in tradition and conscience, to be ranked as fundamental. The purpose of following the principles of natural justice is the prevention of miscarriage of justice."

6. Since the order impugned is passed without affording an opportunity of hearing and the allegations as indicated in the impugned order does not appear to this Court to be so emergent and exceptional where the order of prohibition is inevitable.

7. This Court, therefore, finds that the said order suffers for violation of principles of natural justice and cannot be sustained.''

7. In **Cargomar Vs. Commissioner of Central Exercise, Coimbatore** reported in 2006 (203) E.L.T 549 (Mad), suspension of the operation of licence of the customs or agent under the then Customs House Agents Licensing Regulations, 2004, now Customs Brokers Licensing Regulations, 2013, was challenged, on the grounds inter alia that there was no prior show-cause notice. Adverting to the above contention and after considering the relevant Regulations 20 to 23 of the Customs House General Licensing Rule, 1984 and the decision of Hon'ble Apex Court, as to when there would be a legal right to seek for a show-cause notice, before an adverse order is passed, at paragraph No.10 to 17 in Cargomar's case (cited supra), it is held that prior notice is not required in a case, where suspension of licence is resorted to by a competent authority.

8. Meaning of the word "suspension" extracted from various Dictionaries and the legal meaning, are as follows:-

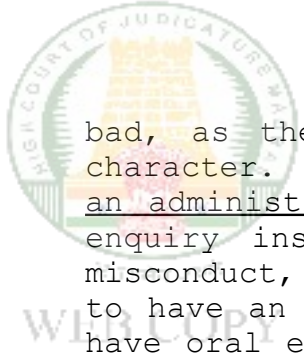
(i) Suspension, as per Wharton's Law Lexicon, 14th Edn., is a temporary stop or hanging up as it were of a right for a time, also a censure on ecclesiastical persons, during which they are forbidden to exercise their office or take the profits of their benefices.

(ii) 'Suspension' means, "action of debarring or state of being debarred, especially, for a time, from a function or privilege; temporary deprivation of one's office or position, or again, state of being temporarily kept from doing or deprived of something.

(iii) Suspension as per Black's Law Dictionary: 7th Edn. Pg.1460 means, (1) to interrupt; postpone; defer (2) to temporarily keep a person from performing a function, occupying an office, holding a job or exercising a right or privilege.

(iv) As per Stroud's Judicial Dictionary, "Suspension' or 'Suspense' is a temporal, ie., temporary, "Stop of Mans' Right (Cowel). Suspension, as per Bauvier's Law Dictionary, Vol.II, means a temporary stop of right, of a law, and the like. As per the Ramanatha Iyer's Dictionary, suspension means temporary intervention or cession of something (as) office, work or labour.

(v) "The act of debarring for a time from a function or privilege". It means a temporary deprivation of once office or position. The suspended officer does not cease to be a public servant, he is only prevented from discharging the duties of his office for the time being. [K.J. Aiyar's Judicial Dictionary, 14th Edn.]



bad, as the proceedings to suspend him, were not of a quasi-judicial character. The order suspending a Government servant pending enquiry is an administrative order. What has been held to be quasi-judicial is the enquiry instituted against the Government servant, on the charges of misconduct, on an enquiry, during which, under the rules it is necessary to have an explanation of the Government servant, to the charges and to have oral evidence, if any, to be recorded, in his presence and then to come to a finding. None of the steps, is necessary, before suspending a Government servant pending enquiry. Such orders of suspension, can be passed, if the authority concerned, on getting a complaint of misconduct, considers that the alleged charge, does not appear to be groundless, that it requires enquiry and that it is necessary to suspend the Government servant pending enquiry.

(iii) In **State of Orissa v. Shiva Parashad Das** reported in **1985 (2) SCC 65**, the Hon'ble Supreme Court tested the correctness of the order of suspension, on the grounds inter alia that as to whether, it was made in contravention of Article 311 of the Constitution of India, as well as Rule 12 of the Orissa Civil Services (Classification, Control and Appeal) Rules, 1962, the High Court allowed the Writ Petition, and quashed the order of suspension, holding that same, is in contravention of Article 311(1) of the Constitution. On appeal, the Hon'ble Supreme Court, at Paragraph 3, held that,

"3. An order of suspension passed against a Government servant pending disciplinary enquiry is neither one of dismissal nor of removal from service within Article 311 of the Constitution. This position was clearly laid down by a Constitution Bench of this Court in *Mohammad Ghouse v. State of Andhra* [1957 SCR 414]. It is unfortunate that this decision was not brought to the notice of the learned Judges of the High Court. Clause (1) of Article 311 will get attracted only when a person who is a member of Civil Service of the Union or an All India Service or a Civil Service of a State is 'dismissed' or 'removed' from service. The provisions of the said clause have no application whatever to a situation where a Government servant has been merely placed under suspension where a Government servant has been merely placed under suspension pending departmental enquiry since such action does not constitute either dismissal or removal from service. The High Court was, therefore, manifestly in error in quashing the order of suspension passed against the respondent on the ground that it was violative of clause (1) of Article 311 of the Constitution."

(iv) The Hon'ble Division of Gujarat High Court in *Vagadia Parambhai Bhurabhai v. T.J.Trivedi* reported in 1987 (1) SLR 648, while dealing with the similar question, at Paragraph 6, held as follows:

"The above observation makes it abundantly clear that the application of the rule of natural justice of being heard before any administrative order having civil consequences of is passed, cannot be insisted upon if the same is likely to defeat the very



object or purpose of interim suspension. While it cannot be disputed on the principle that the principle of natural justice must be extended to administrative actions involving civil consequences, it must be conceded that insistence on the application of the rule of natural justice, namely, affording a hearing before an order is passed, cannot be permitted if it is likely to result in defeating the administrative action required to be taken with promptitude, having regard to the circumstances of the case on hand. Inflexible and rigid application of the rule of audit alteram partem to R.5 of the rules would have the effect of setting at naught the very object or purpose of placing a civil servant under suspension. If a civil servant charged of committing an act involving moral turpitude cannot be placed under suspension unless he is given an opportunity of showing cause against the proposed order, he would continue in service till the hearing is contemplated which would not be in public interest. To continue a civil servant who is alleged to have betrayed a tendency to demand and accept illegal gratification would be against public interest and would defeat the very object of prompt action, ie., suspension in public interest if the procedure of giving a hearing before such an order is passed is required to be undergone. We are, therefore, in agreement with the view taken in Lakshman's case (supra). We, therefore, do not think that R.5 is ultra vires the Constitution on the plea that the procedure prescribed thereunder is in violation of the principles of natural justice."

10.Mr.R.Aravindan, learned Senior Panel Counsel for Central Government fairly admitted that though the nomenclature of Customs House Agents Licensing Regulations, 2004, has been changed in the year 2013, as Customs Brokers Licensing Regulations, 2013, Regulations 18 to 23 are pari materia to the earlier regulations. Accepting the same, we are of the view that the decision of **Cargomar's** case, can be made applicable to a case of interim suspension.

11.We are now concerned with the exercise of power by the competent authority under Regulation 23 of the Customs Brokers Licensing Regulations Rules, 2013, dealing with prohibition, which is extracted hereunder:-

"Notwithstanding anything contained in these regulations, the Commissioner of Customs may prohibit any customs Broker from working in one or more sections of the Customs Station, if he is satisfied that such Customs Broker has not fulfilled his obligations as laid down under regulation 11 in relation to work in that section or sections."

12.Reading of the said Regulation makes it clear that the Commissioner of Customs may prohibit any customs Broker from working in one or more sections of the Customs Station, if he is satisfied that such Customs Broker has not fulfilled his obligations, as laid down under Regulation 11, in relation to work in that section or sections. Provision makes it clear that there should be a subjective satisfaction of the said
<https://hcservices.csb.gov.in/itservices/> the submission of the Learned Senior Panel Counsel that Regulation 23 of Customs Brokers Licensing Regulations, 2013, does not state that prior opportunity must be given. Therefore, the said

authority can pass an order of prohibition. Regulation 23 is preceded by Regulations 18 to 22, which are as follows:-

18. Revocation of licence or imposition of penalty.-

The Commissioner of Customs may, subject to the provisions of regulation 20, revoke the licence of a Customs Broker and order for forfeiture of part or whole of security, or impose penalty not exceeding fifty thousand rupees on a Customs Broker on any of the following grounds, namely :

- (a) failure of to comply with any of the conditions of the bond executed by him under regulation 8;
- (b) failure to comply with any of the provisions of these regulations, within his jurisdiction or anywhere else;
- (c) committing any misconduct, whether within his jurisdiction or anywhere else which in the opinion of the Commissioner renders him unfit to transact any business in the Customs Station;
- (d) adjudicated as an insolvent;
- (e) of unsound mind; and
- (f) has been convicted by a competent court for an offence involving moral turpitude :

Provided that the imposition of penalty or any action taken under these regulations shall be without prejudice to the action that may be taken against the Customs Broker or his employee under the provisions of the Customs Act, 1962 (52 of 1962) or any other law for the time being in force.

19. Suspension of licence.-

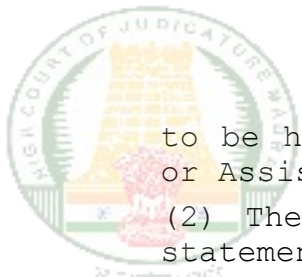
(1) Notwithstanding anything contained in regulation 18, the Commissioner of Customs may, in appropriate cases where immediate action is necessary, suspend the licence of a Customs Broker where an enquiry against such agent is pending or contemplated.

(2) Where a licence is suspended under sub-regulation (1), the Commissioner of Customs shall, within fifteen days from the date of such suspension, give an opportunity of hearing to the Customs Broker whose licence is suspended and may pass such order as he deems fit either revoking the suspension or continuing it, as the case may be, within fifteen days from the date of hearing granted to the Customs Broker :

Provided that in case the Commissioner of Customs passes an order for continuing the suspension, the further procedure thereafter shall be as provided in regulation 20.

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).

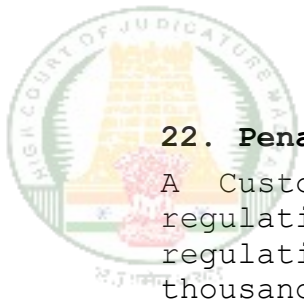
(6) The Commissioner of Customs shall furnish to the Customs Broker a copy of the report of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, and shall require the Customs Broker to submit, within the specified period not being less than thirty days, any representation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

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.



22. Penalty.-

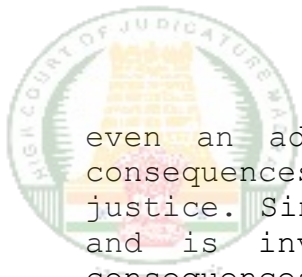
A Customs Broker, who contravenes any provisions of these regulations or who fails to comply with any provision of these regulations shall be liable to a penalty which may extend to fifty thousand rupees.''

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13. As per Regulation 19, in appropriate cases where immediate action is required, the Commissioner of Customs can suspend the licence of a Customs Broker and order for an enquiry. By following the procedure set out in Regulation 20, he can revoke the licence. Instead of suspending or revoking the licence, under Regulation 23, the Commissioner of Customs can also prohibit any Customs Broker from working in one or more sections of the Customs Station, if he is satisfied that such Customs Broker has not fulfilled his obligations as laid down under Regulation 11, in relation to work in that section or sections. Where immediate action is required, the Commissioner of Customs may suspend the licence, by which the Customs Broker is totally restrained from acting in his capacity, and whereas, in the case of prohibition, he is restrained to the limited extent from working in one or more sections of the Customs Station, if the Commissioner of Customs is satisfied that such Customs Broker has not fulfilled his obligations as laid down under Regulation 11, in relation to work in that section or sections. Regulation 23 does not even indicate a post decisional opportunity. But, reading of Regulation 21, indicates that a Customs Broker, who is aggrieved by any order of the Commissioner of Customs under the Regulations, may prefer an appeal, under Section 129 of the Act, to Customs, Excise and Service Tax Appellate Tribunal established under Sub Section 1 of Section 129 of the Act. Although it could be contended that an order under Regulation 23 can also be appealed to the Tribunal, the question is whether a Customs Broker can be prohibited from working in one of the sections of the Customs Station, without any reasonable opportunity. As observed earlier, if the authority is satisfied that there are materials to restrain a Customs Broker from exercising his right under the Licence, he can straightaway suspend the licence and order for an enquiry. At this stage, at least there is a post decisional hearing. But in the case of prohibition, there is neither a pre-decisional nor post decisional opportunity, and only an appeal remedy is indicated. In such a situation, it is against a unilateral decision, without any opportunity, the aggrieved party may have to file only an appeal, against the decision prohibiting him from working in a section or sections of the customs station.

14. Principles of natural justice is not a strait jacket formula. Needless to state that, if an order adverse to a person is passed, he should be provided with an opportunity. Principles of natural justice has not been excluded in Regulation 23 of Customs Brokers Licensing Regulations, 2013. The nature and extent of adhering to the principles of natural justice depends upon facts and circumstances of a given case, but at the same time, it is also a well accepted principle of law that principles of natural justice can be read into a provision, unless applicability of such principles of natural justice is expressly or impliedly excluded.

(i) In **State of Orissa Vs. Binapani Dei & Ors.**, (1967 AIR 1269, = 1967 SCR (2) 625), the distinction between quasi-judicial and administrative decision was perceptively mitigated and it was held that



even an administrative order or decision in matters involving civil consequences, has to be made consistently with the rules of natural justice. Since then the concept of natural justice has made great strides and is invariably read into administrative actions involving civil consequences, unless the statute, conferring power, excludes its application by express language.

(ii) It is trite that rules of "natural justice" are not embodied rules. Also, the phrase "natural justice" is also not capable of a comprehensive definition. Audi alteram partem is only to check the arbitrary exercise of power. The principle implies a duty to act fairly. The Hon'ble Supreme Court in **A.K. Kraipak & Ors. Vs. Union of India & Ors., (1969 (2) SCC 262)**, observed that the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. They do not supplant the law but supplement it.

(iii) In **Canara Bank Vs. V.K. Awasthy, reported in 2005 (6) SCC 321 = AIR 2005 SC 2090 = 2005 (3) SCR 81**, it has been held as follows:-

"Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the fact and circumstances of that case, the frame-work of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. Expression 'civil consequences' encompasses infraction of not merely property or personal rights but of civil 'liberties, material deprivations, and non pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life."

(iv) In **M/s. Sahara India (Firm), Lucknow vs Commissioner Of Income**, reported in **2008 (14) SCC 151**, the Hon'ble Supreme Court held as follows:-

"15. Thus, it is trite that unless a statutory provision either specifically or by necessary implication excludes the application of principles of natural justice, because in that event the Court would not ignore the legislative mandate, the requirement of giving reasonable opportunity of being heard before an order is made, is generally read into the provisions of a statute, particularly when the order has adverse civil consequences for the party affected. The principle will hold good irrespective of whether the power conferred on a statutory body or tribunal is administrative or quasi-judicial."

(v) In **Automotive Tyre Manufacturers Assn. v. Designated Authority**, reported in **(2011) 2 SCC 258**, the Hon'ble Supreme Court held as follows:-

"80. It is thus, well settled that unless a statutory provision, either specifically or by necessary implication excludes the application of principles of natural justice, because in that event the court would not ignore the legislative mandate, the requirement of giving reasonable opportunity of being heard before an order is made, is generally read into the provisions of a statute, particularly when the order has adverse civil



consequences which obviously cover infraction of property, personal rights and material deprivations for the party affected. The principle holds good irrespective of whether the power conferred on a statutory body or Tribunal is administrative or quasi-judicial. It is equally trite that the concept of natural justice can neither be put in a straitjacket nor is it a general rule of universal application.'

15. In a case on hand, the Commissioner of Customs, in exercise of power under Section 23 of the Customs Brokers Licensing Regulations, 2013, has issued a total prohibition order prohibiting M/s Daniel & Samuel Logistics Pvt Ltd., from working in any section of the Customs Commissionerate and Customs station under the jurisdiction of Chennai Customs Zone, with immediate effect. He has no power to prohibit a Customs Broker from working in a section or all sections, as the case may be, but the question that calls up for consideration is, whether the customs broker should be given an opportunity.

16. On the contention that the Hon'ble Division Bench judgment of the Rajasthan High Court has a binding effect, in **Sunitha Venkatram vs. Ms. Divya Rayapati**, reported in **2015 (2) MLJ (Cr1) 385**, this Court held as follows:-

'194. Under the Constitutional Scheme, I am empowered to decide, a question of law, independently of what the other High Courts, have decided and for that matter, the decisions of the other High Courts, may have a persuasive value and they do not a binding precedent. It is true that there must be certain degree of certainty in the law, to be interpreted and applied to all the persons, to which, the Constitution of India, extends, but that principle, does not mean that a High Court is bound by the decision of another High Court, whether it is of the same strength or of a higher composition.

195. No doubt, Judicial Precedents, across the country should maintain uniformity, and that there should be harmony in deciding a point of law, to be followed, but that does not mean that a High Court cannot decide a question of law, on its own, but have to simply follow the decision, decided by another High Court. In a given case, when a Central law is interpreted, every High Court is empowered to independently consider, the question of law, dehors the decisions of other High Court.'

17. Each High Court is established under Article 215 of the Constitution of India and it exercises powers under Article 226 and 227. A High Court may consider the decision of other High Courts on a point of law, but under the constitutional scheme, each High Court has independent power to take a decision on any question of law.

18. Inasmuch as Mr. R. Aravindan, learned Senior Standing Counsel appearing for the appellants urged that the decision of the Rajasthan High Court reported in **2015 (320 ELT 241 (Raj))** (cited supra) should be applied to the instant case, we are of the considered view that the said decision should be of persuasive value, and not binding on us.

<https://hccourts.gov.in/hccservices/>

19. Looking at from any angle on the ground urged in this appeal,



we are not inclined to accept the challenge made to the order passed by the Writ Court, which has rightly set aside a prohibition order passed by the Commissioner of Customs under Regulation 23 of the Customs Brokers Licensing Regulations, 2013 and granted liberty to the Commissioner of Customs, Chennai - VIII - Commissionerate, Customs Broker Section, Custom House, Chennai / Appellant No.3, to proceed in accordance with law, after providing a reasonable opportunity.

20. In the light of the above discussion and decisions cited supra, Writ Appeal fails and the same is dismissed. No costs. Consequently, C.M.P. (MD) No. 2269 of 2016 is closed.

Sd/-

Assistant Registrar (RTI)

/True copy/

Sub Assistant Registrar

To

1. The Commissioner of Customs,
Customs House, New Harbour Estate,
Thoothukudi - 628 004.
2. The Deputy Commissioner of Customs,
Customs House, (Customs Broker Section),
Customs House, New Harbour Estate,
Thoothukudi - 628 004.
3. The Commissioner of Customs,
Chennai - VIII - Commissionerate,
Customs Broker Section,
Custom House, No. 33, Rajaji Salai,
Chennai - 600 001.
4. The Assistant Commissioner of Customs,
Docks Intelligence Unit,
Custom House, No. 33, Rajaji Salai,
Chennai - 600 001.
5. The Superintendent of Customs,
Docks Intelligence Unit,
Custom House, No. 33, Rajaji Salai,
Chennai - 600 001.

+1cc to M/s. R. Aravindan, Advocate SR.No. 12197

+1cc to Mr. N. Dilipkumar, Advocate SR.No. 12826

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W.A. (MD) No. 359 of 2016
and

C.M.P. (MD) No. 2269 of 2016
03.03.2016