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

% Judgment delivered on: 03.10.2016

\+ W.P.(C) 8989/2016

M/S KVS CARGO ..... Petitioner

versus

THE COMMISSIONER OF CUSTOMS (GENERAL) NEW CUSTOMS HOUSE NEW DELHI ..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Priyadarshi Manish with Ms. Anjali J. Manish, Advocates.
For the Respondents : Mr. Sanjeev Narula with Mr. Abhishek and Ms. Vinita, Advocates.

CORAM:-
HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT
03.10.2016

SANJEEV SACHDEVA, J. (ORAL)

1. The petitioner impugns shows cause notice dated 31.08.2016. It is contended that paragraph 26 of the Show Cause Notice shows pre-meditation of the Commissioner of Customs. It is contended that the Commissioner of Customs has already made up his mind to revoke the licence of the petitioner. It is further contended that paragraph 26 refers to an inquiry report when no such inquiry has yet been conducted. The show cause notice is merely an eye wash.

2. Learned counsel for the petitioner relies upon the decision of the

Supreme Court in ***Siemens Ltd. vs. State of Maharashtra and Others*****: (2006) 12 SCC 33** to contend that when notice is issued with pre-meditation, a writ petition would be maintainable. Learned counsel for the petitioner also relies upon the decision of the Supreme Court in ***Oryx Fisheries Private Limited vs. Union of India and Others*****: (2010) 13 SCC 427** to contend that the at the show cause notice stage itself, a person must be told all the charges against him so that he can take his defence and that a person in receipt of the show cause notice must get an impression that he would be given an effective opportunity to rebut the allegations contained in the show cause notice and prove his innocence.

3. Learned counsel for the respondents, who appears on advance notice, admits that there is no inquiry which has yet been conducted. It is contended that the show cause notice has been issued in terms of Regulation 20(1) of the Customs Brokers Licensing Regulations, 2013 (hereinafter referred to as the Regulations) and the inquiry report referred to in paragraph 26 of the show cause notice dated 31.08.2016 is an inquiry which is yet to be conducted in terms of Regulation 20(2) of the Regulations.

4. It is contended that the Commissioner of Customs has not made up any mind. The language of the show cause notice dated 31.08.2016 is standard and the petitioner has been put to notice in terms of Regulation 20(1) of the Regulations.

5. Regulation 20 of the Regulations reads 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."

6. In terms of Regulation 20(1) of the Regulations, the Commissioner is to issue a notice 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 and to submit within 30 days a written statement of defence. In terms of Regulation 20(2), the Commissioner on receipt of a written statement from the Customs Broker is empowered to direct the Deputy Commissioner or Assistant Commissioner of Customs to inquire into the grounds which are not admitted by the Customs Broker.

7. Paragraph 25 of the show cause notice reads as under:-

> "25. *The Inquiry Authority shall submit a report within 90 days of the issuance of this Show Cause Notice to the Commissioner of Customs (General), New Custom House, New Delhi. On receipt of the Inquiry Report, the same shall be shared with M/s KVS Cargo Limited, Custom Broker for their comments."*

8. Paragraph 25 of the show cause notice dated 31.08.2016 shows that the Commissioner has merely appointed an Inquiry Authority, which has been directed to submit a report within 90 days. On receipt of the inquiry report, the same has been directed to be shared with the petitioner for their comments. Ms. Manjula Verma, Assistant Commissioner of Customs has been appointed as an Inquiry Officer.

2. Paragraph 26 of the show cause notice dated 31.08.2016 reads as under:-

> *"26. Now, in view of the above, and in terms of provisions of Regulation 20 of CBLR, 2013, M/s KVS Cargo 2151/2-A, First Floor, New Patel Nagar, New Delhi holding CHA License No. R-Ol/DEL/Cus/2014 (PAN No. AJ1PJ5841R), valid up to 25/11/2023, issued by the Commissioner of Customs (I&G), New Delhi are hereby called upon to show cause to the Commissioner of Customs (General), New Customs House, New Delhi within 30 days of the receipt of the Inquiry Report as to why, in view of the preceding paras and the Inquiry Report:-*
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> *a) he should not be held responsible for contravention of various provisions of Regulation 11(a), 11(d), 11(e) and 11(n) of CBLR, 2013; .*

b) *their CB license should not be revoked and part or whole of the security submitted at the time of issue of their license, should not be forfeited from them in terms of Regulation 20 of CBLR, 2013 for failure to comply. Math the provisions of Regulation 11(a), 11(d), 11(e) and 11(n) of CBLR, 2013;*

c) *penalty should not be imposed on them in terms of Regulation 20 of CBLR, 2013.*

9. Reading of paragraph 26 shows that it is only putting the petitioner to notice in terms of Regulation 20(1) of the Regulations. The impugned notice further shows that complete opportunity is being granted to the petitioner to furnish evidence in support of their response/objections. An opportunity of personal hearing is also being granted to the petitioner.

10. Perusal of the show cause notice dated 31.08.2016 does not create an impression that there is any pre-meditated determination by the Commissioner of Customs. The Commissioner of Customs has put the petitioner to notice and has given an opportunity to the petitioner to produce evidence and also complies with the principles of natural justice in as much as it offers an opportunity of a personal hearing.

11. The judgments ***Siemens Ltd.***(*supra*) and ***Oryx Fisheries Private Limited*** *(supra)* relied upon by the petitioner are clearly not applicable in the facts of the present case. As noted above, the show cause notice does not give an impression that there is a pre-meditated determination insofar as the action proposed to be taken against the petitioner is concerned. The petitioner, as noted above, is also being given sufficient opportunity to

produce evidence as also to represent his case.

12. The further contention of the petitioner that the higher authority has appointed a junior authority as an inquiry officer, is also not sustainable. In terms of Regulation 20(1) Regulations, the Commissioner of Customs is to appoint a Deputy Commissioner of Customs or Assistant Commissioner of Customs, who is subordinate authority to the Commissioner of Customs.

13. Furthermore, the petitioner has impugned a mere show cause notice.

14. I find no merit in the petition. The petition is, accordingly, dismissed. There shall be no order as to costs.

SANJEEV SACHDEVA, J

OCTOBER 03, 2016
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