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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 3265/2017

HARJEET SINGH JOHAR

..... Petitioner

Through: Mr. Pankaj Bhatia, Mr. Dhruv Surana,
Mr. Nipun Goel and Mr. Ashish Chaudhury,
Advocates.

versus

**THE COMMISSIONER OF CUSTOMS (GENERAL)
& ANR.**

..... Respondents

Through: Mr. Sanjeev Narula, Senior Standing
Counsel with Mr. Abhishek Ghai, Advocate.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE VINOD GOEL

ORDER

22.05.2017

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CM No. 19658/2017 (for condonation of delay in filing counter affidavit)

1. For the reason stated in the application, the delay in filing counter affidavit is condoned. The application is disposed of.

W.P.(C) 3265/2017 & CM No. 14226/2017 (for stay)

2. There are two orders challenged in this petition. One, the order dated 15th March, 2017 passed by the Commissioner of Customs (General), New Delhi under Regulation 23 of the Customs Broker Licensing Regulations, 2013 ('CBLR') thereby prohibiting the Petitioner from continuing the work as Custom Broker at Delhi Customs Stations.

3. The second is an order dated 31st March, 2017 issued by the Commissioner of Customs, Central Excise & Service Tax, Commissionerate Hapur, Meerut, Uttar Pradesh whereby the Petitioner's CB license was suspended under Regulation 19(1) of CBLR and an opportunity was given to the Petitioner to appear before the Commissioner at Meerut for a post-decisional hearing on 10th April, 2017.

4. When the matter was first listed before this Court on 17th April, 2017, while directing notice to issue to the Respondents, a direction was issued that "till the next date of hearing further steps in the proceedings qua the suspension of the Petitioner's license shall remained stayed."

5. The Court has heard learned counsel for the parties.

6. As far as order of prohibition passed by Respondent No. 1 under Regulation 23 of the CBLR, 2013 is concerned, although not expressly stated therein, it is inherent in the said regulation that an opportunity of hearing has to be given to the party prior to passing such order. This legal position has been explained in *Commissioner of Customs, Bangalore v. Flyjac Logistics Pvt. Ltd.* 2015 (323) ELT 730 (Kar) and *SSS SAI Shipping Services Pvt. Ltd. v. Union of India* 2016 (331) ELT 519 (Guj).

7. It is plain that in the present case no show cause notice was issued to the Petitioner prior to the passing of the impugned prohibition order by Respondent No. 1 on 15th March, 2017. The Court accordingly quashes the impugned order dated 15th March, 2017 passed by Respondent No. 1.

8. As regards the suspension order dated 31st March 2017, it is submitted by learned counsel for the Petitioner that the facts set out in the suspension order are a verbatim reproduction of those stated in the prohibition order and that therefore there was no independent application of mind by Respondent No. 2 before directing suspension of the Petitioner's licence. Secondly, it is submitted that no 'immediate' action was called for under Regulation 19(2) of the CBLR, 2013. The impugned order shows that the events that lead to the suspension were all between 1st July and 21st November, 2016. Therefore, there was no immediate reason for invoking Regulation 19(2) of the CBLR, 2013.

9. On the other hand, it is pointed out by Mr. Sanjeev Narula, learned Senior Standing Counsel for the Respondents that the impugned suspension order is an appealable one. Secondly, the Petitioner has been given an opportunity to appear before the Commissioner, Meerut. It is only after hearing the Petitioner that the suspension order can be confirmed by the said authority. Therefore, any prayer in that regard must be pre-mature. It is seen that the suspension order does mention that since an enquiry was contemplated against the Petitioner in view of the facts gathered, Respondent No. 2 found it appropriate to immediately keep under suspension the licence as it appeared that the continuation of business transactions by the Petitioner would be prejudicial to the interest of the Revenue. The above reason cannot be said to be irrelevant in the context of Regulation 19 (2).

10. At the same time, since the suspension of licence would hurt the business of the licence holder, it is necessary that the hearing pursuant to

such suspension of licence should be concluded at an early date.

11. Consequently, while not interfering with the impugned order dated 31st March, 2017 issued by Respondent No. 2 suspending the Petitioner's licence, the Court directs that the Petitioner will appear before the Commissioner, Meerut on 5th June, 2017 at 11:00 am and by that date also tender a reply to the order of suspension. Within two weeks of the said date, Respondent No. 2 will pass a final order in regard to the suspension in accordance with law by giving reasons and after taking into account all the submissions of the Petitioner.

12. The rights and contentions of the parties are left open to be urged before Respondent No. 2. It is needless to mention that Respondent No. 2 would pass an independent order uninfluenced by the fact that there was a prohibition order and that it was set aside by this order.

13. The petition and the application are disposed of in the above terms.

S. MURALIDHAR, J

VINOD GOEL, J

MAY 22, 2017

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