

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7441 OF 2018

OPMS Clearing & Forwarding Agencies
(P) Ltd. & Anr.

.... Petitioners

Vs.

Commissioner of Customs (NS-III),
SIIB (IMP) & Anr.

.... Respondents

Mr. Atish D. Ray i/by Mr. Prashant Nakati for the Petitioners.
Mr. Karan Adik with Mr. Ram Ochani for the Respondents.

CORAM: S.C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.

DATE : AUGUST 06, 2018

P.C:

1. The petitioners in this petition claim that petitioner No.1 is a Clearing and Forwarding Agent and petitioner No.2 is its Director.

2. The petitioner No.1 was operating under a licence granted in terms of the Customs Brokers Licensing Regulations, 2013.

3. The licence was granted by the Madras Customs House but it enables petitioner No.1 to carry on operation even in Mumbai Customs. In the jurisdiction of Mumbai Customs and in the course of business, the petitioners tried to file a Bill of Entry through an electronic generation system. However, instead of being allowed to access the system and pursuing the cause in terms of this Bill of Entry for its client, the petitioners were informed that the licence stands suspended.

4. It is only a screen-shot which says "suspended" that is being relied upon to bring this petition.

5. In the writ petition, in para 4, reliance is placed on Regulation 19 of the Regulations prescribing a procedure for suspension of licence.

6. The petitioners say that these have not been followed, the suspension is *ex facie* illegal and we should interfere in our writ jurisdiction even though there is a remedy available to the petitioners of approaching the Customs, Excise

and Service Tax Appellate Tribunal.

7. The counsel appearing for the petitioners would argue that availability of alternate and equally efficacious remedy is not an absolute bar in invoking exercise of writ jurisdiction. That is a rule of caution and prudence rather than a bar.

8. Further, when the action is *ex facie* illegal and contrary to the procedural rules, as in this case, this Court's jurisdiction is not ousted but is still open for being availed of.

9. The other argument is that, when a statute lays down a procedure for a thing to be done in a certain manner, then, such thing has to be done in that manner only and all other methods of performance are strictly forbidden. Reliance is strongly placed on the Judgment of the Privy Council in the case of **Nazir Ahmed vs. King Emperor**, reported in AIR 1936 PC 253 (2) and followed and applied in the case of **Ramchandra Keshav Adke vs. Govind Joti Chavare & others**, reported in AIR 1975 SC 915.

10. The respondents have not served an order of suspension and such an entry simpliciter, therefore, would not suffice far from taken to be as compliance with law.

11. The respondents, appearing through Mr. Adik, however, reiterated that the petitioners must approach the Tribunal for there is a dispute on facts and it is not admitted that there is no compliance with the rules. The petitioners have rushed to this Court after filing of a representation and thus this is a case of alleged inaction which can also be made the subject-matter of appeal.

12. After hearing both sides, we find that we should not set a precedent of entertaining writ petitions challenging an order of suspension of a Customs House Agent/Customs Broker.

13. The petitioners' case is that petitioner No.1 is a registered Customs Broker, registered with the Madras Customs House and operating under a licence and has been functioning in the whole area of Mumbai Customs for the last two years. On

9-4-2018, it tried to access the EDI system of the Mumbai Customs but was informed that it is suspended. The petitioner No.1 made a representation dated 23-5-2018 but finding no response has moved this writ petition.

14. When the statute or law prescribes for a remedy of appeal, it is conceded that it is alternate and equally efficacious. The misconception that an appeal can be filed only if there is an order passed and duly served on the parties like the petitioners need not detain us. We have clearly said that it is a misconception, for even inaction or non-compliance with the rules or not passing a specific order of suspension but putting up a one line communication or note of suspension on the website can also be highlighted. That can be made as a ground of challenge and the Appellate Authority's attention could be invited to the rules and the procedural matters which would have to be complied with before suspending the licence. The petitioners thus can highlight every possible grievance, including that the manner chosen or adopted contravenes the law. Further, the petitioners can highlight the inaction of the

authorities in not dealing with the representation of the petitioners promptly. The Tribunal has been consistently entertaining appeals and even against the orders of suspension. It has on several occasions granted relief when it has found a patent illegality or non-adherence to the rule of law. We have no doubt in our mind that the Tribunal is well-equipped to consider cases of even inaction of the authorities and its appellate power is wide enough to deal with such issues and grant necessary reliefs. The apprehension of the petitioners that there is no order and therefore there is no appeal is thus not well-founded.

15. The reliance on **Nazir Ahmed** (supra) as well can be placed before the Tribunal while arguing the appeal. Each and every argument of the counsel can be canvassed in the appeal before the Tribunal. In the circumstances, we do not wish to entertain this petition and it is dismissed for want of alternate and equally efficacious remedy. No order as to costs.

(SMT. BHARATI H. DANGRE, J.)

(S.C. DHARMADHIKARI, J.)