IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6512 OF 2019

EagleBurgmann India Pvt. Ltd. ...Petitioner

vs.

Union of India and others ...Respondents

Dr. Sujay Kantawala a/w. Poorva Patil i/b. Brijesh Pathak for petitioner.
Mr. Pradeep S. Jetly, for the respondents.

CORAM : M.S. SANKLECHA &
M. S. SONAK, JJ.
DATE : JUNE 07, 2019

P.C.:

1. This petition under Article 226 of Constitution of India, challenges the following:-

(a) The Recovery Notice dated 18.03.2019 issued by the Joint Commissioner of Customs under the Customs Act 1962 (the Act). The impugned notice seeks to recover the sum of Rs.24,14,747/-in terms of the Order-in-Original No.392/2016-17 dated 28.10.2016 passed by the Additional Commissioner of the Customs; and

(b) The action of the respondents in putting name of the petitioner on "*Alert List*" consequent to impugned notice dated 18.03.2019. This results in the petitioner not being able to export and/ or import goods in the regular course of its business.

2. It is an undisputed/admitted position that the impugned recovery notice and the consequent putting the petitioner on the *"Alert List"* have its basis/genesis on the petitioner has not paying the customs duty as confirmed in terms of the Order-in-Original dated 28.10.2016.

3. The petitioner's grievance is that the impugned recovery notice dated 18.03.2019 is high handed as at no point of time did it receive the order dated 28.10.2016 nor did it receive any Show Cause Notice preceding order dated 28.10.2016. Thus the petitioner had no opportunity to present its case before the authorities or even challenge the same before the Appellate Authorities. It is the further case of the petitioner that, on merits they had been granted eight EPCG licenses in the year 2006-2007 and the petitioners have fulfilled the export obligations in terms of the licenses granted to them and also in possession of the redemption letter issued by the DGFT., Mumbai. Thus the entire action of the respondents is high handed and arbitrary.

4. Mr. Jetly learned Counsel appearing for the revenue on instructions, fairly states that the impugned recovery notice dated 18.03.2019 and the basis thereof viz. Order-in-Original dated 28.10.2016 of the Additional Commissioner of Customs may be set aside. In fact, copy of the order dated 28.10.2016 is tendered by the respondents across the bar and taken on record and marked "X" for identification. Mr. Jetly further submits that the petitioner shall be given a copy of the Show Cause Notice leading to order dated 28.10.2016 to the petitioner. Thereafter the petitioner would be personally heard before a speaking order which is appealable under the Act is passed by the Additional Commissioner of Customs.

5. In the above view, we set aside the recovery notice dated 18.03.2019 as well as Order-in-Original dated 28.10.2016 passed by the Additional Commissioner of Customs, we direct the respondents in terms of the statement made by the Counsel on instructions to issue a copy of the Show Cause Notice leading to the order dated 28.10.2016 to the petitioner and pass the order thereon after hearing the petitioner. The respondents are also directed to delete the petitioner's name from the "Alert List". It is only if the adjudication order is passed on the Show Cause Notice is adverse to the petitioner, that proceedings for recovery and consequent alert notice will be commenced by the department after the period available to the petitioner to challenge the same under the Act expires.

6. It is clarified that, amount of Rs.10,00,000/- which has been deposited by the petitioner with the respondents would continue to be retained by the respondents, till such that, time an order on adjudication as directed above is passed. In case the adjudication order is adverse to the petitioner, it would adjust the same against the dues of the petitioner subject to order in appeal under the Act.

7. **Petition** is **disposed of** in the above terms.

(M.S. SONAK, J.) **(M. S. SANKLECHA, J.)**